# Investment Arbitration and Constitutional Law Constraints in Iran: An Examination of the Impact of Articles 139, 77, 125, and 81 on the Design of Arbitration Clauses and Protective Enforcement Mechanisms

**1. Mohammad Salemi Pour: PhD Student, Department of Law, Emirates Branch, Islamic Azad University, Dubai, United Arab Emirates**
**2. Atefeh Amini Nia*: Department of International Law, CT.C., Islamic Azad University, Tehran, Iran**
**3. Mehdi Meihami: Department of Private Law, NT.C., Islamic Azad University, Tehran, Iran**
**4. Zeinab Pourkhaqan Shahrezaei: Department of Law, Isf.C., Islamic Azad University, Isfahan, Iran**

***Correspondence: a.amininia@iauctb.ac.ir**

**Abstract**

International investment arbitration is regarded as one of the most important mechanisms for protecting foreign investors and ensuring legal certainty for investment in international economic relations. However, within the Iranian legal system, the acceptance and enforcement of obligations arising from investment arbitration are subject to constitutional limitations and considerations. Articles 139, 77, 125, and 81 of the Constitution are among the most significant provisions that may affect the conclusion of investment agreements, the drafting of arbitration clauses, and the implementation of the State's international obligations. In this context, ambiguity concerning the scope of Article 139 with respect to the referral to arbitration of disputes involving public and state property, the requirement for parliamentary approval of certain international agreements under Articles 77 and 125, and the restrictions arising from Article 81 concerning the granting of concessions to foreign nationals constitute some of the most significant legal challenges facing Iran's foreign investment protection regime. The present study aims to examine the impact of these constitutional provisions on investment arbitration and the related protective enforcement mechanisms. It seeks to answer the question of the extent to which the obstacles and limitations arising from Iranian constitutional law affect the validity, design, and enforcement of investment arbitration clauses and how a balance may be established between constitutional requirements and the imperatives of attracting foreign investment. This research employs a descriptive-analytical method and draws upon library-based sources, domestic legislation, judicial decisions, interpretative opinions, and relevant international instruments. The findings indicate that although the Constitution of the Islamic Republic of Iran does not impose an absolute prohibition on the acceptance of investment arbitration, interpretative ambiguities and divergent understandings of the aforementioned constitutional provisions reduce legal predictability and increase investment risk. The findings further demonstrate that the precise drafting of arbitration clauses, the distinction between the stage of concluding an agreement and the stage of referring a dispute to arbitration, and the enactment of clear legislation governing the implementation of constitutional provisions can play an effective role in strengthening foreign investment protection and mitigating existing legal challenges.

**Keywords:** investment arbitration, Article 139 of the Constitution, Article 77 of the Constitution, Article 125 of the Constitution, foreign investment protection.

Received: 02 May 2026
Revised: 01 September 2026
Accepted: 07 September 2026
Initial Publication 07 September 2026
Final Publication 01 March 2027



**Citation**: Salemi Pour, M., Amini Nia, A., Meihami, M., & Pourkhaqan Shahrezaei, Z. (2027). Investment Arbitration and Constitutional Law Constraints in Iran: An Examination of the Impact of Articles 139, 77, 125, and 81 on the Design of Arbitration Clauses and Protective Enforcement Mechanisms. *Legal Studies in Digital Age*, 6(2), 1-11.

## 1. Introduction

International investment arbitration, as one of the key pillars of attracting and protecting foreign investment, plays a vital role in facilitating transnational economic relations. By providing a forum for the impartial and efficient settlement of disputes between foreign investors and host States, this mechanism ensures the legal security necessary for the flow of international capital. In light of its growing importance, the formulation and implementation of bilateral and multilateral investment agreements, which often contain binding arbitration clauses, have become one of the principal priorities of States' economic policymaking.

In the Iranian legal system, despite recognition of the necessity of attracting foreign investment and the efforts undertaken in this regard, the full acceptance and enforcement of obligations arising from investment arbitration face fundamental challenges at the constitutional level. The prevailing view in this respect emphasizes the existence of significant limitations arising from constitutional provisions, particularly Article 139 (referral of disputes to arbitration), Articles 77 and 125 (the requirement of parliamentary approval for international treaties), and Article 81 (the prohibition on granting concessions to foreign nationals). Although these provisions were enacted with the aim of safeguarding national sovereignty and the public interest, interpretative ambiguities and divergent legal understandings surrounding them constitute serious obstacles to validating investment arbitration clauses and ensuring the effective enforcement of international arbitral awards in Iran. This situation reduces legal predictability and increases investment risk in the country.

The novelty of this article lies in its attempt to provide an in-depth and systematic examination of the tangible effects of the aforementioned constitutional provisions on the drafting of arbitration clauses and the design of protective enforcement mechanisms in foreign investment arbitration in Iran. Unlike traditional approaches that merely emphasize the existence of legal obstacles, this study seeks, through a descriptive-analytical method and by relying on domestic legal sources, international instruments, and judicial practice, to examine how a balance can be established between constitutional requirements and the imperatives of attracting foreign investment. This article seeks to answer the question of how, through precise interpretation or legislative reform, a legal framework can be designed that fully complies with constitutional principles while simultaneously protecting Iran's national interests and providing foreign investors with the necessary degree of assurance. To this end, practical solutions will be proposed for the precise drafting of arbitration clauses, the separation of the different stages of agreement formation and implementation, and the enactment of clear legislation concerning the interpretation and application of constitutional provisions, with a view to taking an effective step toward strengthening foreign investment protection in the country.

## 2. The Nature of Investment Arbitration and Its Position in International Law

The trend toward "investment facilitation" has increasingly generated dynamic and extensive debate in the field of international investment policy. This is because States expect to use "investment facilitation" as a policy instrument for improving their domestic investment environments (Zu & Bi, 2025). Within this trend, and as an important component of the process of achieving investment facilitation, increasing attention has been directed toward how the international investment dispute settlement mechanism can be reformed so as to facilitate the amicable resolution of investment disputes and frictions between investors and host States (Tang, 2022). International investment arbitration is one of the most important mechanisms for settling disputes between foreign investors and host States and has received increasing attention in recent decades. This mechanism, which has its roots in bilateral investment treaties (BITs) and regional investment agreements, allows investors to bring claims directly against host States when the latter breach their investment-protection obligations. Unlike traditional diplomatic procedures, the nature of investment arbitration in international law is grounded in the rule of law, investment protection, and legal predictability. By establishing an impartial and independent process, this mechanism seeks to facilitate the administration of justice and compensation for potential losses suffered by investors and, consequently, to contribute to the attraction of foreign investment and the economic development of States. Investment arbitration therefore occupies a highly significant position in international law as a key instrument for regulating transnational economic relations and safeguarding the rights and interests of foreign investors.

### *2.1. Concept, Objectives, and Mechanisms of International Investment Arbitration*

The purpose and underlying rationale of international investment agreements (IIAs) are to promote and protect foreign investment (Egger et al., 2023). Accordingly, within this framework, international investment arbitration constitutes one of the principal mechanisms for settling disputes between foreign investors and host States. It has developed within international investment law with the objective of ensuring legal security for cross-border investments. This legal mechanism enables a foreign investor, without requiring diplomatic protection by its home State, to bring a claim directly against the host State before an international arbitral tribunal. The principal foundations of this mechanism are found in thousands of bilateral investment treaties, trade and investment agreements, and the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). The Convention, administered through the International Centre for Settlement of Investment Disputes (ICSID), an institution of the World Bank Group, provides the most important institutional framework for investment arbitration and is currently regarded as the backbone of the international investment arbitration system. Under Article 25 of the ICSID Convention, the jurisdiction of the Centre depends on the existence of a dispute arising directly out of an "investment" and the consent of the parties, although the Convention itself does not provide a specific definition of investment, an issue that has generated extensive debate in arbitral practice and legal scholarship.

Broad changes in international capital flows reflect the interaction among States' economic policies, development strategies, and geo-economic initiatives at the global level, with China representing one prominent example in this regard (Zhu & Guo). Accordingly, the principal objective of international investment arbitration is to establish a balance between the sovereign rights of States and the protection of foreign investors' rights. Investment treaties typically provide standards such as Fair and Equitable Treatment, Full Protection and Security, the prohibition of expropriation without compensation, and the National Treatment principle. Where these obligations are breached, investors may seek compensation through international arbitration. Investment arbitration has therefore become an instrument for enhancing investor confidence, reducing political risk, and encouraging foreign capital flows. At the same time, some legal scholars argue that this system may, in certain circumstances, restrict States' regulatory space in public-interest fields such as environmental protection, public health, and human rights. Consequently, numerous reforms have been proposed in recent years to establish a more appropriate balance between investors' rights and the public interest.

International investment arbitration mechanisms are principally conducted under ICSID arbitration, the ICSID Additional Facility, the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL Arbitration Rules), and, in some instances, the rules of institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the Stockholm Chamber of Commerce (SCC) (Dimitriou, 2024). Arbitration proceedings generally commence with the filing of a request, followed by the constitution of the arbitral tribunal, consideration of jurisdiction and the merits of the dispute, issuance of the award, and ultimately enforcement of the award. One important characteristic of the ICSID system is that, under Article 54 of the ICSID Convention, awards must be recognized and enforced in all Contracting States as if they were final judgments of their domestic courts. During the proceedings, the arbitral tribunal may also order provisional or interim measures to preserve the rights of the parties, a mechanism that has acquired considerable importance in investment arbitration practice.

In recent years, one of the most important developments in international investment arbitration has been the increased transparency and accountability of the system. In this context, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, commonly known as the Mauritius Convention on Transparency, were adopted. By expanding public access to arbitration documents, facilitating publication of arbitral awards, and permitting participation by third parties, these instruments have sought to enhance the legitimacy and acceptance of the investment arbitration system and move it closer from a purely private dispute-resolution mechanism toward an institution possessing public-law dimensions. These developments demonstrate that international investment arbitration is no longer merely an instrument for protecting investors' interests; rather, it has become part of the global economic governance system and must establish an appropriate balance among investment protection, transparency, accountability, and respect for State sovereignty.

### *2.2. The Concept of the Arbitration Clause and Its Role in the Settlement of Investment Disputes*

An arbitration clause in investment disputes is an agreement under which the parties, whether an investor and the host State or State-affiliated entities, agree to refer disputes arising from an investment contract or investment relationship to arbitration rather than to domestic courts. On the one hand, such a clause constitutes an expression of the principle of party autonomy in contracts; on the other hand, in the field of international investment, it constitutes the primary basis for the jurisdiction of the arbitral tribunal. At the international level, Article 25 of the 1965 ICSID Convention regards the written consent of the parties as a fundamental requirement for the jurisdiction of the International Centre for Settlement of Investment Disputes, and in the absence of such consent, the arbitral tribunal lacks jurisdiction to hear the dispute. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards likewise safeguards the validity of arbitration agreements and awards arising from them and, under Article II, requires Contracting States to recognize written arbitration agreements. Nevertheless, the validity of an arbitration clause is not absolute. Where domestic law prohibits or restricts the referral of certain disputes or the resort of particular persons or entities to arbitration, the arbitration clause may be subject to consequences such as invalidity, annulment of the arbitral award, or refusal of enforcement.

Under Iranian law, the principal restriction governing arbitration clauses in disputes involving public and State property derives from Article 139 of the Constitution and the Note to Article 458 of the Code of Civil Procedure. Pursuant to Article 139 of the Constitution, the settlement of claims concerning public and State property or the referral of such claims to arbitration is, in each case, subject to the approval of the Council of Ministers and must be brought to the attention of the Islamic Consultative Assembly; where the opposing party is foreign or the matter is considered an important domestic case, approval by the Islamic Consultative Assembly is also required (Sanjari & Ghaleh-Shakhani, 2022). The Note to Article 458 of the Code of Civil Procedure similarly subjects the referral to arbitration of disputes concerning public and State property to Article 139. Accordingly, in the Iranian legal system, an arbitration clause contained in an investment contract to which the State, a State-owned company, or a public institution is a party raises an important question of “arbitrability”; namely, whether the relevant State person or entity possesses the legal capacity to refer the dispute to arbitration and whether the subject matter of the dispute itself is capable of being submitted to arbitration. Some authors, adopting a restrictive interpretation of Article 139, limit its scope to property that, prior to the dispute, already constituted public or State property or to disputes related to sovereign acts of the State. Others, by contrast, interpret Article 139 broadly and consider any arbitration relating to public or State property to be conditional upon compliance with the procedures stipulated in that provision (Khodabakhshi, 2026).

The role of an arbitration clause in investment dispute settlement is to establish an impartial, specialized, and predictable mechanism for resolving disputes between an investor and a host State, because foreign investors generally prefer their disputes to be adjudicated by a forum independent of the host State’s domestic courts. At the international level, instruments such as the ICSID Convention, the UNCITRAL Arbitration Rules, and the New York Convention have strengthened this function and transformed the arbitration clause into an important instrument for guaranteeing the legal security of investments. In the Iranian legal system, however, investment arbitration clauses may be subject to constitutional and statutory restrictions because of their potential connection with public and State property. Consequently, the operation of an arbitration clause in Iran will be effective and enforceable only if, at the time the investment contract is drafted, the status of the State or public party, the nature of the property or subject matter of the dispute, the necessity of obtaining approval from the Council of Ministers or the Islamic Consultative Assembly, the applicable law, the arbitral forum, and the enforceability of the award are precisely determined. Thus, although the arbitration clause is one of the most important instruments for resolving investment disputes, its validity and practical effect under Iranian law depend on compliance with Article 139 of the Constitution, the Note to Article 458 of the Code of Civil Procedure, and consistency with international instruments governing arbitration and investment.

## 3. The Principles of the Iranian Constitution and Their Impact on Investment Arbitration

The Constitution of the Islamic Republic of Iran, as the supreme legal instrument of the country, establishes the general framework of legal and governmental relations, and its provisions can have a significant impact on the acceptance and enforcement of international investment arbitration. Certain constitutional provisions, particularly those concerning the conclusion of international treaties, governmental powers in matters of public law, and economic affairs, may overlap or even conflict with mechanisms of international investment arbitration. Accordingly, a careful examination of these provisions and their comparison with the requirements and practices of investment arbitration is essential for understanding potential obstacles and limitations affecting the implementation of such arbitrations in Iran. Understanding this interaction between domestic and international legal systems is particularly important in the context of attracting foreign investment.

### *3.1. Analysis of Article 139 and Its Relationship with the Referral of Disputes to Arbitration*

Article 139 of the Constitution of the Islamic Republic of Iran constitutes one of the most important public-law restrictions on the referral of State-related disputes to arbitration. Under this provision, the "settlement of claims concerning public and State property or the referral thereof to arbitration" is, in each case, subject to the approval of the Council of Ministers and must be brought to the attention of the Islamic Consultative Assembly; moreover, where the opposing party is foreign or the matter constitutes an important domestic case, approval by the Islamic Consultative Assembly is also required (Dashti & Haeri Esfahani, 2020). Accordingly, Article 139 does not negate the permissibility of arbitration as such; rather, it subjects arbitration to specific conditions in the particular field of disputes concerning public and State property. From this perspective, Article 139 should not be interpreted as imposing an absolute prohibition on arbitration in disputes involving the State; instead, it should be regarded as a supervisory mechanism intended to prevent the uncontrolled submission of disputes concerning public assets to arbitration. Nevertheless, these supervisory procedures may in practice cause delay, ambiguity, and reduced efficiency in arbitration because arbitration is inherently founded on speed, specialization, confidentiality, and flexibility, whereas Article 139 makes the referral of a dispute to arbitration dependent upon administrative and political decisions.

The relationship between Article 139 and the referral of disputes to arbitration can be analyzed from two perspectives: first, the "capacity of the State and public institutions to agree to arbitration," and second, the "arbitrability of the subject matter of the dispute." In private disputes, persons are generally free to refer their disputes to arbitration, whereas in disputes involving the State, party autonomy is restricted by considerations of sovereignty, protection of the public treasury, and public oversight. Accordingly, where a contract is concluded between an investor and a governmental entity and contains an arbitration clause, the mere inclusion of that clause is not necessarily sufficient to establish its validity and enforceability. It must also be determined whether the subject matter of the dispute concerns public or State property and, if so, whether the procedures prescribed by Article 139 have been observed. Failure to comply with these procedures may result in invalidity of the arbitration clause, challenges to the arbitrator's jurisdiction, annulment of the arbitral award, or even refusal to enforce the award. In other words, Article 139 removes arbitration clauses in State contracts from the sphere of purely contractual agreement and brings them within the field of public law and governmental supervision.

Nevertheless, an expansive interpretation of Article 139 may create a serious obstacle to the development of arbitration, particularly in investment contracts, construction contracts, oil and gas agreements, energy projects, transport arrangements, and infrastructure projects. If every dispute involving the State or a State-owned company is deemed subject to Article 139, the legal certainty of contracts is reduced, because the private party or foreign investor cannot know whether the arbitration clause incorporated in the contract will be enforceable when a dispute arises. For this reason, some legal scholars have attempted to interpret Article 139 restrictively, confining it to disputes directly concerning public and State property rather than every contractual dispute involving the State. A distinction may also be drawn between sovereign acts and commercial or proprietary acts of the State; thus, where the State enters into a contract in a manner comparable to a commercial legal person, referral of the dispute to arbitration should not necessarily be subject to the same restrictions applicable to sovereign acts. Such an interpretation is more compatible with the requirements of international trade and foreign investment and may prevent Article 139 from becoming a structural obstacle to efficient dispute resolution without eliminating legal supervision altogether.

Within this framework, a comparative example may provide greater analytical focus on Article 139. Under English law, as the law of a developed jurisdiction, the general principle is to permit arbitration even in disputes involving the State. Pursuant to Section 106 of the Arbitration Act 1996, the provisions of Part I of the Act apply to any arbitration agreement to which the Crown or the United Kingdom Government is a party (Davies & Noury, 2024). The implication of this provision is that, for purposes of entering into an arbitration agreement, the State is generally placed in a position comparable to that of private persons, and the mere fact that one party is governmental does not invalidate the arbitration clause. This approach demonstrates that, in certain developed legal systems, rather than imposing a general prohibition or burdensome procedural requirements on

State arbitration, the State is permitted to undertake arbitration obligations within the framework of arbitration legislation just as other persons may do. This does not imply the complete absence of oversight over public assets; rather, such oversight is principally exercised through budgetary rules, administrative accountability, parliamentary scrutiny, and contractual transparency instead of making the very act of referring a dispute to arbitration subject to case-by-case approval by political institutions. From this perspective, reform or restrictive interpretation of Article 139 under Iranian law, particularly in investment and commercial contracts, could enhance the confidence of private and foreign parties and improve the effectiveness of the dispute settlement system.

### *3.2. Articles 77, 125, and 81 of the Constitution and the Restrictions Arising Therefrom*

Articles 77, 125, and 81 of the Constitution of the Islamic Republic of Iran, although not directly situated within a chapter concerning arbitration, are in practice among the most important constitutional provisions that restrict, or at least shape, the acceptance of international arbitration, particularly in investment disputes and State contracts involving foreign parties. Article 77 provides that treaties, conventions, contracts, and international agreements must be approved by the Islamic Consultative Assembly, while Article 125 assigns the signature of such instruments, following completion of the requisite legal procedures, to the President or his legal representative. Alongside these provisions, Article 81, which absolutely prohibits the granting to foreigners of concessions for the establishment of companies and institutions in commercial, industrial, agricultural, mining, and service sectors, has in some interpretations been regarded as an obstacle to certain contractual arrangements with foreign parties or to the expansion of foreign economic influence. When these three provisions are considered together with Article 139, they form a network of constitutional restrictions under which the referral of disputes arising from foreign investment to arbitration cannot be regarded merely as a simple contractual decision, but instead becomes dependent on constitutional legitimacy, the competence of State institutions, and compliance with legislative and executive procedures.

From the perspective of arbitration and investment, Article 77 primarily concerns the "basis of State consent" and the "validity of the State's international obligations" (Ghiasi et al., 2025). Under international investment law, a State's consent to arbitration may be expressed in a bilateral investment treaty, a multilateral agreement, domestic legislation, or a specific contract. Under Iranian constitutional law, however, where such consent is expressed in the form of an international agreement or treaty, it cannot be regarded as complete and effective from the perspective of domestic law unless the instrument has been approved by the Islamic Consultative Assembly. Accordingly, where Iran accepts an arbitration clause in an international instrument, Article 77 requires the underlying instrument to receive parliamentary approval in order for the State's consent to be firmly established under domestic law. The limitation arising from this provision is that the executive branch cannot independently, and without legislative authorization, create a binding arbitration obligation for the State through an international agreement. This is particularly important in the investment field because many States' arbitration obligations are contained not in individual contracts but in bilateral investment treaties or comparable instruments for the reciprocal protection of investment. From this perspective, Article 77 guarantees legislative oversight, but may at the same time reduce the speed and flexibility with which the State can accept modern dispute settlement mechanisms and may, in some circumstances, create uncertainty for foreign parties concerning the finality and stability of the State's consent to arbitration.

Article 125 complements Article 77, and the restriction it creates relates primarily to the stage of the "formal realization and expression of the State's will." Under this provision, treaties, conventions, agreements, and contracts between the Government of Iran and other governments are signed, after approval by the Islamic Consultative Assembly, by the President or his legal representative. Consequently, even where an instrument containing an arbitration clause or an obligation to resolve disputes internationally has received parliamentary approval, it cannot, from the perspective of domestic law, necessarily be regarded as a final and complete State obligation until the legally prescribed signature procedures have been fulfilled. The significance of this provision in investment disputes lies in the fact that there may be temporal and legal gaps between the negotiation, approval, signature, and implementation of agreements, and any defect in this process may provide grounds for challenging the validity of an arbitration obligation. In other words, Article 125 does not constitute a substantive prohibition on arbitration, but it does impose an important formal restriction on the creation of international obligations outside official constitutional channels. Accordingly, the analysis of investment disputes must distinguish between the contractual consent of an executive agency and consent that is constitutionally valid and attributable to the State, because a State institution may include an arbitration clause in a contract, yet where the obligation rises to the level of an international agreement or inter-State commitment, compliance with Articles 77 and 125 becomes necessary.

Article 81 is perhaps theoretically the most ambiguous and, at the same time, one of the most sensitive constitutional provisions in this field (Eshaghi & Seifzadeh, 2022), because it prohibits the "granting of concessions" to foreigners and continuously raises the question of whether certain investment, exploitation, economic participation, or dispute settlement arrangements may amount to the granting of a concession. The prevailing restrictive interpretation holds that Article 81 is directed toward concessionary arrangements resembling capitulatory systems and colonial concessions, rather than every investment contract or every form of foreign economic participation. Nevertheless, where a contractual structure grants extensive exclusive rights, long-term control over resources, or extraordinary powers to a foreign party, the likelihood of invoking Article 81 to challenge the legitimacy of the contract increases. The relationship between this provision and arbitration is important because, where the underlying contract or principal legal relationship is constitutionally questionable, the arbitration clause contained within it may also be challenged. Although the validity of an arbitration agreement is, to some extent, analyzed independently from that of the principal contract under the doctrine of separability, in practice it is not entirely unaffected by the legitimacy of the underlying legal relationship. In the field of international investment, reading Article 81 together with Articles 77 and 125 means that Iran must not only comply with the procedures for approval and signature when accepting arbitration obligations, but must also ensure that the nature of a contract or agreement with a foreign party is not structured in a manner that creates the appearance of granting a constitutionally prohibited concession. Thus, these three provisions collectively establish a restrictive but interpretable framework. If interpreted expansively, they may constitute serious obstacles to investment arbitration; if interpreted restrictively and purposively, they may permit a balance between maintaining constitutional sovereignty and satisfying the need to attract investment and resolve disputes effectively.

## 4. Legal Obstacles, Investment Risks, and Legal Solutions

The Constitution of the Islamic Republic of Iran, as the country's supreme legal instrument, determines the general framework of legal and governmental relations, and its provisions can significantly affect the acceptance and enforcement of international investment arbitration. Certain constitutional provisions, particularly those relating to the conclusion of international treaties, governmental powers concerning public law, and economic matters, may overlap or even conflict with mechanisms of international investment arbitration. Accordingly, a careful examination of these provisions and their comparison with the requirements and practices of investment arbitration is necessary to understand potential obstacles and restrictions affecting the implementation of such arbitrations in Iran. Understanding this interaction between the domestic and international legal systems is particularly important in the context of attracting foreign investment.

### *4.1. Obstacles and Investment Risks in Iran Arising from Constitutional Ambiguities*

Investments made by foreign investors constitute essential factors in the economic development of States. To attract foreign investors, it is necessary to provide them with sufficient security and assurance so that they can confidently deploy their financial resources and capital within the territory of another State (Guran, 2024). Obstacles and risks associated with investment in Iran, particularly in the fields of foreign investment and major economic contracts, arise to a considerable extent from ambiguity in the interpretation of certain constitutional provisions and their relationship with arbitration rules, contractual obligations, and the requirements of international trade. Articles 139, 77, 125, and 81 of the Constitution were each enacted to safeguard the public interest, protect State property, ensure legislative oversight of international commitments, and prevent the granting of illegitimate concessions to foreigners. In practice, however, expansive and inflexible interpretations of these provisions may create substantial uncertainty in the investment environment. Before entering a country, a foreign investor primarily seeks legal predictability; that is, the investor must be able to determine that the contract is valid, its arbitration clause is enforceable, the State's obligations are not vulnerable under domestic law, and, in the event of a dispute, the dispute settlement mechanism will be clear and effective. In Iran, ambiguity concerning which contracts fall within Article 139, which agreements require parliamentary approval under Article 77 and signature by the President or his legal representative under Article 125, and which arrangements may be regarded as the "granting of a concession" to foreigners under Article 81 increases the legal risk of investment.

Article 139 of the Constitution constitutes one of the most important sources of this risk because it makes the referral to arbitration of disputes concerning public and State property subject to approval by the Council of Ministers, notification of the Islamic Consultative Assembly, and, in certain cases, parliamentary approval. On its face, this provision is intended to protect public assets; however, in investment, energy, infrastructure, oil and gas, transport, and economic partnership contracts, the involvement of the State or State-owned companies continually raises the question of whether an arbitration clause contained in the contract is valid without compliance with the procedures prescribed by Article 139. Where the answer is unclear, the investor faces the risk that, after a dispute arises, the State party will invoke non-compliance with Article 139 to challenge the jurisdiction of the tribunal, the validity of the arbitration agreement, or the enforceability of the award. This situation transforms arbitration, which is intended to function as a rapid and confidence-enhancing means of dispute resolution, into a source of dispute in itself. Consequently, the investor may price the additional risk into the contract from the outset, refrain from entering the project, or demand stronger guarantees. The principal problem, therefore, is not merely the existence of Article 139, but rather the absence of clear criteria for determining its scope and the fluctuation between expansive and restrictive interpretations in legal scholarship and practical application.

Articles 77 and 125 also create additional risk with respect to the procedures governing the conclusion and validity of the State's international obligations. Under Article 77, treaties, conventions, contracts, and international agreements must be approved by the Islamic Consultative Assembly, and under Article 125, following parliamentary approval, such instruments must be signed by the President or his legal representative. The ambiguity arises because the boundaries among a "State contract," an "international commercial contract," an "investment agreement," and an "international obligation of the State" are not always clear in practice. If an executive agency or State-owned company concludes a contract with a foreign party containing an international arbitration clause, investment guarantees, long-term commitments, or exclusive rights, it may subsequently be argued that the instrument should have been approved and signed in accordance with Articles 77 and 125. Such ambiguity may undermine the validity of the State's obligations toward the investor and create doubts for the foreign party concerning its ability to rely upon the contract or an arbitral award. Article 81, through its prohibition on granting concessions for the establishment of companies and institutions to foreigners, may likewise, if interpreted expansively, pose challenges to certain foreign investment structures, exploitation agreements, long-term partnerships, or exclusive economic rights. A more reasonable interpretation, however, would restrict the provision to abnormal colonial or monopolistic concessions rather than treating every form of foreign economic presence or participation as constitutionally prohibited.

Compared with developed legal systems, the principal difference is that such systems generally draw a more precise distinction between "supervision of the public interest" and "interference with contractual reliability." French law reflects this approach particularly in Article 1504 of the Code of Civil Procedure, which provides that arbitration is international when it involves the interests of international trade (Bureau, 2024). By defining international arbitration on the basis of the involvement of "international trade interests," the provision focuses on the economic and transnational nature of the dispute rather than on absolute prohibitions. This logic demonstrates that French law in the field of international arbitration, particularly in foreign investment relations, has sought to establish a balance between safeguarding the public interest and maintaining the certainty and reliability of contractual obligations. The significance of this model lies in the fact that, while preserving supervision over public interests, French law seeks to clarify the scope of restrictions and their exceptions so that private or foreign parties can determine from the outset whether an arbitration clause is valid. For Iran, the solution does not necessarily require complete elimination of constitutional supervision. Rather, legal investment risk could be reduced through a restrictive and purposive interpretation of Articles 139, 77, 125, and 81; enactment of clear ordinary legislation governing arbitration in State and investment contracts; precise identification of cases requiring approval by the Islamic Consultative Assembly or the Council of Ministers; and differentiation between sovereign and commercial acts of the State. Such an approach would both safeguard the public interest and prevent constitutional ambiguities from becoming structural obstacles to attracting capital, enforcing contracts, and resolving disputes effectively.

### *4.2. Legal Solutions for Balancing Constitutional Requirements and the Attraction of Foreign Investment*

In light of the foregoing discussion, Articles 139, 77, 125, and 81 of the Constitution may be interpreted not as absolute barriers to arbitration and investment but rather as supervisory mechanisms. Accordingly, it can be argued that the Iranian

Constitution does not absolutely prohibit the acceptance of investment arbitration. The principal problem lies instead in interpretative ambiguities, the absence of clear criteria, and the possibility of divergent readings of these provisions. Under such circumstances, a foreign investor faces the risk that, after entering into a contract and even after a dispute arises, the validity of the arbitration clause or the jurisdiction of the arbitral tribunal may be challenged on the ground of non-compliance with constitutional procedures. The first solution, therefore, is to distinguish between the "principle of permissibility of arbitration" and the "legal procedures governing referral of a dispute to arbitration." In other words, the Constitution does not reject arbitration in principle; rather, where public property, the State's international obligations, or public interests are involved, it requires compliance with specific procedures. Such an interpretation would remove investment arbitration in Iran from a state of uncertainty and transform it into a predictable and regulated institution compatible with constitutional law.

In this respect, the experience of English law is noteworthy. Pursuant to Section 106 of the Arbitration Act 1996, the provisions of Part I of the Act apply to every arbitration agreement to which the Crown or the United Kingdom Government is a party (Davies & Noury, 2024). Thus, the State, like other persons, may become a party to an arbitration agreement unless the law provides otherwise. The importance of this provision lies in the fact that English law does not regard State participation in arbitration as exceptional, ambiguous, or inherently contrary to sovereignty, but instead regulates it within the framework of arbitration legislation. This model demonstrates that, while preserving the position of the State and the public interest, arbitration rules may also be applied to State contracts, thereby preventing the governmental character of one contracting party from itself becoming an obstacle to the validity of the arbitration agreement. A comparable logic could be employed in Iranian law. The legislature could enact clear ordinary legislation expressly providing that governmental entities and State-owned companies are authorized, within the limits of their statutory powers and subject to compliance with Article 139 procedures, to include arbitration clauses in foreign investment contracts. In such circumstances, neither constitutional supremacy would be weakened nor would foreign investors face the risk of unexpected invalidation of an arbitration clause.

Another solution is to draw a precise distinction between the stage of "concluding the arbitration agreement" and the stage of "referring a specific dispute to arbitration." One of the most important ambiguities in Iranian law concerns whether the mere inclusion of an arbitration clause in a State contract requires the approval of the Council of Ministers or the Islamic Consultative Assembly, or whether these procedures become necessary only after an actual dispute has arisen and a specific matter is to be referred to arbitration. A strict and expansive interpretation of Article 139 may lead to the conclusion that even the arbitration clause itself is invalid ab initio. A more reasonable interpretation, however, would recognize the validity of an arbitration clause as part of an investment contract where it has been concluded within the statutory authority of the State body concerned, while requiring compliance with the specific procedures of Article 139 at the stage when a particular dispute is referred to arbitration or the arbitral mechanism is actually activated. This distinction is consistent with both the protection of public property and the need to prevent instability in investment contracts. In other words, an investor should be able to know from the outset that the agreed arbitration clause is valid under domestic law, while understanding that its practical implementation in disputes involving public property remains subject to the prescribed procedures. Such an approach preserves contractual reliability without disregarding the supervision of competent legal institutions.

As noted above, a comparable rationale is found in French law, particularly in Article 1504 of the Code de procédure civile, or French Code of Civil Procedure. Under Article 1504, arbitration is considered international when it involves "the interests of international trade" (Train, 2025). The importance of this provision lies in the fact that French law does not determine the international character of arbitration merely by reference to the nationality of the parties or their governmental or private status; rather, it focuses on the economic and transnational nature of the relationship. This criterion is especially useful in foreign investment arbitration because disputes arising from foreign investment are generally connected with capital flows, technology transfer, implementation of infrastructure projects, international financial obligations, and cross-border commercial interests. Accordingly, rather than automatically subjecting every dispute involving a State party to restrictions and uncertainty, the economic, commercial, and international nature of the relationship may be taken into account. From this perspective, Article 1504 of the French Code of Civil Procedure provides a logical model for Iran: where a dispute arising from a foreign investment contract possesses elements of international trade and cross-border economic interests, its settlement through international arbitration should be recognized, subject, of course, to compliance with constitutional procedures and the supervisory requirements necessary to safeguard the public interest.

Accordingly, the ultimate legal solution for Iran is the enactment of clear ordinary legislation, or the amendment of existing legislation, governing arbitration in State contracts and foreign investment. Such legislation should, on the one hand, clarify the implications of the relevant constitutional provisions and, on the other, provide foreign investors with the necessary degree of certainty. It should specify which contracts fall within Article 139, at what stage approval by the Council of Ministers or the Islamic Consultative Assembly is required, which authority or institution is competent to include an arbitration clause, what distinction should be drawn between the State's commercial activities and its sovereign acts, and under what circumstances international arbitration is permissible in light of the commercial and investment nature of the dispute. Arbitration clauses in investment contracts should also be drafted with precision, including clear provisions concerning the applicable law, arbitral institution or rules, language of arbitration, seat of arbitration, method of appointing arbitrators, scope of arbitral jurisdiction, and manner of enforcement of the award. In light of the English experience under Section 106 of the Arbitration Act 1996 and the French experience under Article 1504 of the Code of Civil Procedure, the preferable solution is neither to eliminate constitutional supervision nor to adopt an expansive and deterrent interpretation of constitutional restrictions. Rather, a balance must be established among sovereignty, public order, protection of State property, and the need for certainty and reliability in investment contracts. Such a balance can reduce the legal risks of investment in Iran, strengthen the validity of arbitration clauses, and facilitate the attraction of foreign investment without departing from constitutional foundations.

## 5. Conclusion

Although the Iranian Constitution does not absolutely preclude the acceptance of investment arbitration and its relevant provisions, when properly interpreted and implemented, can be reconciled with mechanisms for attracting foreign capital, interpretative ambiguities and divergent understandings of Articles 139, 77, 125, and 81 have reduced legal predictability and increased investment risk. This situation, particularly with respect to the scope of Article 139 concerning the referral to arbitration of disputes involving public and State property, the statutory requirement for parliamentary approval of international agreements under Articles 77 and 125, and the restrictions imposed by Article 81 on the granting of concessions, requires greater clarity and a coordinated legal approach. The findings demonstrate that precise drafting of arbitration clauses, differentiation between the stage of concluding an investment agreement and the stage of referring a dispute to arbitration, and enactment of clear interpretative legislation governing the implementation of constitutional provisions can play an effective role in strengthening foreign investment protection and reducing existing legal challenges.

To achieve an appropriate balance between constitutional requirements and the imperatives of attracting foreign investment, several legal measures may be proposed. These measures include providing clear and consistent interpretations of constitutional provisions by competent institutions, enacting supportive and facilitative legislation governing investment arbitration while taking constitutional considerations into account, and encouraging the use of transparent and comprehensive arbitration clauses capable of eliminating potential ambiguities. It is also essential to enhance legal knowledge among judicial and executive officials concerning international investment arbitration mechanisms and the applicable legal requirements. Implementation of these measures can safeguard national interests and constitutional supremacy while significantly enhancing legal security for foreign investors and, consequently, contributing to the country's economic development.

## Ethical Considerations

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

## Acknowledgments

Authors thank all who helped us through this study.

## Conflict of Interest

The authors report no conflict of interest.

**Funding/Financial Support**

According to the authors, this article has no financial support.

**References**

Bureau, D. (2024). La volonté des parties demeure impuissante à définir la nature interne ou internationale d'un arbitrage et le régime des voies de recours contre la sentence. *Revue de l'arbitrage*(4).
Dashti, T., & Haeri Esfahani, S. (2020). Arbitration in State-Related Disputes with a Transformative View of Article 139 of the Constitution. *New Research in Administrative Law*, *2*(2), 135-139.
Davies, E., & Noury, S. (2024). Reform of the Arbitration Act 1996: a missed opportunity to entrench diversity? *Arbitration International*, *40*(1), 93-114.
Dimitriou, V. (2024). *The impact of repeatedly appointed arbitrators in the development of investment law: A de facto bench? An empirical perspective* [Doctoral dissertation, University of Leicester].
Egger, P., Pirotte, A., & Titi, C. (2023). International investment agreements and foreign direct investment: A survey. *The World Economy*, *46*, 1526.
Eshaghi, A., & Seifzadeh, K. (2022). Conflict-of-Laws Rules Governing Technology Transfer Contracts in Relation to Articles 81 and 153 of the Constitution. *Public Law Knowledge*, *37*(11), 83.
Ghiasi, J. a.-D., Pouraziz, M., & Rasoulkhani, H. (2025). Assessing the Possibility of an Effective Guardian Council Response to Customary International Law Inconsistent with the Constitution and Islamic Sharia. *Legal Research*, 1-3.
Guran, D. (2024). What Are the Means for Ensuring Fair Treatment for Foreign Investors? *Bahcesehir Cyprus University Law Journal*, *2*, 107.
Khodabakhshi, A. (2026). *Arbitration Law and Related Claims in Judicial Practice* (17th ed.). Enteshar Joint Stock Company.
Sanjari, G., & Ghaleh-Shakhani, S. (2022). The Position and Status of Arbitration in Resolving Investment Disputes. *Modern Jurisprudence and Law*, *3*, 4.
Tang, Y. (2022). Investment facilitation for development and the reform of international investment dispute settlement mechanism: The choice of developing countries. *Journal of International Dispute Settlement*, *13*(4), 643.
Train, F. X. (2025). L'extension de la clause compromissoire à un non-signataire est-elle soumise aux mêmes conditions en matière interne et en matière internationale? *Revue de l'arbitrage*(3).
Zhu, M., & Guo, S. Policy-Driven FDI Dynamics: Examining the Rising Proportion of OECD and China's Outward Capital Flows. (pp. 1)
Zu, W., & Bi, Y. (2025). Investment Facilitation and the Structural Evolution of International Investment Law: Toward a Third Configuration. *World Trade Review*, *24*(5), 544.