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The Role of the Guarantee Condition in Islamic Contracts and Its Legal Effects on Transaction Risk Reduction

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ABSTRACT

The guarantee condition (*shart-e zeman*) in Islamic contracts has, in recent years, emerged as one of the most effective mechanisms for strengthening contractual obligations and managing transactional risk, gaining a prominent position in juristic–legal analyses and the structuring of modern contracts. The present study aims to examine the juristic nature of the guarantee condition, clarify its legal foundations within the Civil Code, and analyze its role in reducing transactional risk, thereby offering a coherent account of the functional dimensions of this legal institution. The research first examines the concept of guarantee and distinguishes it from other security mechanisms, including contractual suretyship, personal guarantee, and collateral arrangements. Subsequently, through an analysis of Articles 234–246 of the Civil Code and the prevailing opinions of Imami jurists, the framework governing the validity, limitations, and legal consequences of the guarantee condition is clarified. The findings indicate that the guarantee condition—particularly when formulated as a condition of result—can facilitate risk transfer, strengthen the creditor's legal position, reduce the likelihood of default, and enhance predictability in contractual performance. Nevertheless, challenges remain, including ambiguity regarding the validity of guarantee conditions in fiduciary contracts, potential tension with the principle of fault-based liability, and certain juristic constraints, all of which underscore the need for clearer legislative regulation and precise contractual drafting. In the final section, the practical applications of the guarantee condition in sale contracts, lease agreements, civil partnerships, as well as financial and Islamic banking contracts are examined, and recommendations are proposed to enhance transactional efficiency and legal security based on this condition. The study concludes that, when properly structured and aligned with both juristic principles and legal norms, the guarantee condition can function as a central pillar of risk management in contemporary contractual relations.

Keywords: *Guarantee condition; transactional risk; Islamic contracts; strict liability; Civil Code; risk management; Islamic contractual law; Islamic banking.*

Introduction

With the expansion of economic relations and the increasing complexity of transactional structures in the modern world, contracting parties are now confronted more than ever with diverse financial, credit, and legal risks. In contemporary transactions, uncertainty regarding the performance of obligations, sudden economic fluctuations, and severe market volatility have elevated the importance of risk-mitigation mechanisms. Within this context, the existence of a legal mechanism capable of minimizing the probability of non-performance by the obligor becomes



essential for transactional security. One of the most significant mechanisms in Islamic law and Iranian civil law is the guarantee condition, the essence of which lies in covering the risk of non-performance or delayed performance. In other words, the guarantee condition in many contracts functions as a tool for allocating risk to a person who possesses the financial capacity or professional competence necessary to ensure proper performance of the obligation. Historically, this condition developed in Islamic jurisprudence as a means of protecting creditors and stabilizing contractual relations. Consequently, examining its function under contemporary conditions has gained renewed significance (1).

The importance of the guarantee condition within the structure of Islamic obligations derives from the strong emphasis of Islamic jurisprudence on the principle of *pacta sunt servanda* (fulfillment of contractual obligations) as well as the protection of the weaker contractual party. As one of the ancillary contractual stipulations, the guarantee condition allows either a third party or one of the contracting parties to assume responsibility for performance or compensation for resulting damages. In Imami jurisprudence, the validity of this condition is grounded in principles such as contractual freedom, the obligation to honor agreements, and the presumption of contractual validity. Jurists have widely accepted the guarantee condition in reciprocal contracts as a preventive measure against future disputes. Its primary function within this framework is to create assurance and reduce the likelihood of loss. Particularly in contracts involving substantial financial exchange, long contractual duration, or reliance on the personal competence of the obligor, the guarantee condition plays a decisive role in fostering trust and reducing transactional risk (2).

The position of the guarantee condition in Imami jurisprudence rests upon extensive debates concerning the nature of guarantee, the transfer of liability between obligors, and its applicability to future debts. Imami jurists generally consider the guarantee condition valid and enforceable, except in specific situations such as guarantees within fiduciary contracts, where doctrinal disagreement persists. According to prevailing views, the guarantee may operate either as a transfer of debt from the debtor's liability to that of the guarantor or as an additional liability alongside the debtor's original obligation. The adaptability of these different forms has enabled the guarantee condition to function preventively across various contracts, including sale, lease, *ju'ala*, partnership, and *mudarabah*. The well-known juristic debate surrounding guarantees of obligations not yet due also supports the legitimacy of anticipatory guarantees, particularly in contracts giving rise to future obligations. This strong jurisprudential foundation explains the high adaptability of the guarantee condition within modern commercial transactions (3).

Within Iranian civil law, the guarantee condition likewise occupies a significant position and has been incorporated into legislation on the basis of Islamic jurisprudential principles. Articles 234–246 of the Civil Code recognize various contractual stipulations—including conditions of result, action, and description—and the guarantee condition is typically analyzed as a condition of result. The inclusion of such a condition allows the creditor to claim compensation from the guarantor without the need to prove fault or delay in performance. Iranian legal scholars, emphasizing the principle of contractual freedom, have accepted the validity of the guarantee condition as an effective instrument for ensuring performance of obligations. Consequently, this condition has become widely utilized in banking agreements, construction contracts, installment sales, civil partnerships, and large financial transactions, serving both regulatory and confidence-building functions. Iranian courts have also tended to interpret guarantee clauses in a manner supportive of creditor protection (4).

Despite the considerable importance of the guarantee condition, significant research gaps remain in this field. The most notable deficiency is the absence of comprehensive analysis concerning the relationship between guarantee conditions and risk management in transactions, particularly within an economic environment characterized by instability, inflation, and uncertainty in contractual enforcement. Previous studies have primarily focused on jurisprudential foundations or theoretical analysis, while comparatively little attention has been devoted to evaluating the practical consequences of guarantee conditions in modern transactions such as banking contracts, taxation arrangements, investment agreements, and public contracts. The lack of research capable of bridging classical jurisprudential doctrines with the practical needs of contemporary commercial law represents a major scholarly gap, thereby underscoring the necessity of the present study (5).

The principal objective of this article is to examine the role of the guarantee condition in managing and reducing transactional risk from the perspective of Islamic jurisprudence and Iranian civil law, demonstrating how this condition may function as an efficient instrument for fostering certainty, regulating contractual relations, and preventing disputes in contemporary transactions. The study seeks to clarify the operational mechanisms of guarantee, determine the contracts in which it remains valid, and analyze its legal consequences for contracting parties. A precise explanation of the nature of guarantee, the limits of guarantor liability, conditions of validity, and resulting legal effects can assist contract designers, financial institutions, and economic actors in drafting reliable agreements. Furthermore, the article adopts a comparative perspective to analyze doctrinal divergences between Imami jurisprudence and civil law regarding the guarantee condition (6).

One of the central questions addressed in this article concerns the legal nature of the guarantee condition and its precise mode of operation. Does the guarantee condition always result in a transfer of liability from the principal debtor to the guarantor, or can it merely create additional liability without extinguishing the original debt? The answer to this question is crucial because differing interpretations of the nature of guarantee produce distinct legal consequences concerning liability allocation and claims for damages. Some legal scholars interpret guarantee as an independent obligation, while others regard it as an accessory obligation existing alongside the principal debt. These doctrinal differences directly influence the determination of responsibility between guarantor and debtor (7).

Another research question concerns the types of contracts in which the guarantee condition may validly be incorporated. Both Imami jurisprudence and Iranian law generally accept guarantee clauses in reciprocal contracts such as sale and lease; however, disagreement arises in fiduciary contracts such as deposit, loan for use, and agency. In such contracts, if the condition transforms the trustee into a guarantor, certain jurists consider it contrary to the inherent nature of the contract. Careful examination of these disagreements, together with analysis of the application of guarantee conditions in modern banking and construction agreements, may clarify how the practical boundaries between validity and invalidity of guarantee clauses are determined (8).

The most important research question concerns the relationship between the guarantee condition and transactional risk. In modern contracts, risks of non-payment, delay, and non-performance may impose substantial losses and occasionally lead to the suspension of major economic projects. By transferring risk to a party better positioned to compensate potential losses, the guarantee condition enhances contractual trust and reduces uncertainty. Financial institutions and banks frequently employ guarantee clauses as credit-assessment tools to control operational and credit risks. Accordingly, analyzing the guarantee condition through the lens of risk management constitutes a central axis of this article (9).

Finally, the article adopts a descriptive-analytical research methodology. Data are collected from authoritative jurisprudential texts, statutory sources, and Persian legal scholarship and subsequently examined through conceptual analysis and legal reasoning. The jurisprudential section analyzes dominant opinions of Imami jurists and classical legal texts, while the legal section examines the Iranian Civil Code and judicial practice. The methodological objective is to present an integrated understanding of the place of the guarantee condition within the law of obligations and to clarify its functional role in reducing risks in contemporary transactions, thereby enabling practical conclusions and reform-oriented recommendations for the legal system.

Theoretical and Conceptual Foundations

The Concept of Guarantee and the Guarantee Condition

In Imami jurisprudence, guarantee (*zeman*) constitutes one of the most fundamental legal institutions whose primary function is the protection of the creditor through the transfer or expansion of liability in relation to a debt. Linguistically, the term denotes “undertaking responsibility” or “assuming another person’s debt,” while in juristic terminology it refers to a situation in which one liability is either substituted for or added to another liability. Imami jurists generally regard guarantee as producing a transfer of liability from the principal debtor to the guarantor, a feature that distinguishes it from related institutions such as personal attendance guarantees or assignment of debt. A significant distinction also exists between contractual guarantee, possessory guarantee, and conditional guarantee in terms of the source of liability creation. Contractual guarantee arises from agreement and contractual formation, whereas possessory guarantee results from control over another’s property without contractual basis and generates non-contractual liability grounded in established jurisprudential rules. By contrast, conditional guarantee emerges through the insertion of a clause within a binding contract and is therefore analyzed as an extension of contractual responsibility. This classification demonstrates that guarantee functions not merely as a compensatory mechanism but also as a flexible legal instrument for structuring contractual and legal relations (1, 2).

The concept of a guarantee condition within binding contracts is particularly significant because it enables parties to adjust the scope of liability in accordance with contractual needs. The guarantee condition is commonly categorized as a “condition of result,” meaning that, under Article 234 of the Civil Code, its realization does not depend on the performance of a specific act; rather, the legal consequence materializes immediately upon conclusion of the contract. In such circumstances, the obligor or a third party assumes responsibility for performance or compensation of potential damages, thereby effectively reducing transactional risk (4). The inclusion of a guarantee condition in binding contracts—such as sale, lease, *ju’ala*, and partnership agreements—is considered valid under the principle of freedom of contract and relevant provisions of the Civil Code, provided that it does not contradict the essential nature of the contract or mandatory legal rules. Imami jurists likewise recognize the legitimacy of guarantee conditions so long as they comply with general requirements governing valid contractual stipulations, and many scholars regard them as rational and legally acceptable conditions. Consequently, the guarantee condition possesses both a strong jurisprudential foundation and a firmly established position in Iranian civil law as an instrument for risk allocation, reinforcement of obligations, and enhancement of contractual security (8).

The Concept of Transactional Risk in Law

In legal doctrine, transactional risk refers to a set of potentially harmful contingencies that threaten the performance of contractual obligations and may lead to loss for one of the contracting parties. Within contract law, risk materializes when unforeseen events or changes in economic circumstances obstruct performance or unexpectedly increase the cost of fulfilling contractual duties (1). The principal elements of risk in reciprocal contracts include uncertainty, the probability of loss, and the causal relationship between loss and contractual performance, all of which may disrupt exchange value, contractual equilibrium, and mutual trust between the parties (4). Within this framework, both primary and ancillary obligations—as well as contractual safeguards such as guarantee conditions, liquidated damages clauses, performance obligations, and third-party guarantees—play a decisive role in risk management and allocation. These instruments allow contracting parties to anticipate and control financial consequences arising from changing conditions, delayed performance, or incomplete execution. From this perspective, risk management forms part of the core regulatory function of contract law, and under the principle of contractual freedom and good faith, parties may redistribute risk among themselves through contractual design (2).

In practice, transactional risk appears in several principal forms. The most significant include default risk, delay risk, and non-performance risk. Default risk arises when an obligor refuses or fails entirely to perform an obligation or discharge a debt, compelling the creditor to rely on guarantee mechanisms or initiate legal proceedings (5). Delay risk occurs when performance is not completed within the agreed timeframe, resulting in damage to the counterparty; in such situations, delay penalties and guarantee conditions operate as mechanisms for mitigating risk (6). Non-performance risk represents a compounded form of risk in which external events or economic transformations render contractual execution impossible or excessively difficult. Examples include severe currency fluctuations, sudden increases in raw material prices, or restrictive legal regulations (9). The existence of such risks necessitates contractual drafting that incorporates personal and proprietary guarantees, adjustment clauses, and risk-allocation provisions in order to preserve stability, predictability, and efficiency in transactional relations. Accordingly, analysis of transactional risk plays a foundational role not only in managing obligations but also in shaping the broader system of contractual guarantees.

Legal Examination of the Guarantee Condition in the Iranian Legal System

The Position of the Guarantee Condition in the Civil Code

The position of the guarantee condition within the Iranian Civil Code must be analyzed within the broader framework governing contractual stipulations, particularly Articles 234–246, which define the validity, classification, and limitations of contractual conditions. Article 234 divides conditions into three categories—conditions of description, action, and result—and, due to its legal nature, the guarantee condition is generally classified as a condition of result. By inserting such a condition, a specific legal outcome—namely the transfer of responsibility, obligation to compensate loss, or assumption of guarantee liability—is achieved directly and without the necessity of a further juridical act (1). Jurists and legal scholars emphasize that a guarantee condition as a condition of result remains valid only when the intended legal effect is capable of realization within the legal system, meaning that the outcome contemplated by the parties must be legally recognizable and enforceable (2).

Article 235 further requires certainty regarding the subject matter of the condition, warning that ambiguity may invalidate either the condition or the contract itself. Accordingly, a guarantee condition is valid only when the nature and scope of the guarantee are sufficiently clear to prevent uncertainty or excessive risk (4). Article 236 declares impossible conditions void; therefore, a guarantee imposing legally impossible obligations or commitments beyond a party's capacity lacks legal effect (5). Through recognition of guarantee clauses as conditions of result, the Civil Code accepts their validity within the limits established by general contractual rules and statutory competence.

At the same time, the validity of guarantee conditions remains subject to three principal limitations articulated both in statutory provisions and general contract doctrine. First is the prohibition against conditions contrary to the essential nature of the contract. If a guarantee clause fundamentally alters the legal character of the contract or negates its intrinsic purpose, it is considered invalid (1). For example, in a contract of sale, transferring all inherent legal responsibilities of the seller to the buyer in a manner that destroys contractual equilibrium may be regarded as incompatible with the essence of the contract.

Second is the prohibition of uncertainty and excessive risk. This limitation is particularly relevant to guarantee conditions; if the extent of liability is ambiguous or drafted in a manner that leaves one party unaware of its consequences, the clause may be deemed void due to uncertainty under both jurisprudential principles and civil law doctrine (3).

Third, the guarantee condition must not conflict with mandatory law or public order. Conditions that impose liability contrary to statutory prohibitions—such as guarantees relating to unlawful acts or waiver of inalienable rights—lack legal validity (2). Article 246 further clarifies that the invalidity of a condition does not necessarily invalidate the contract itself unless the condition constituted the principal motive of the parties. Accordingly, while the Civil Code recognizes the guarantee condition as a valid condition of result, it simultaneously establishes a precise framework ensuring balance, legal certainty, and freedom from excessive uncertainty, thereby confirming its legitimacy as an instrument for risk management and enforcement of contractual obligations.

The Relationship Between the Guarantee Condition and Contractual Liability

Within the framework of contractual liability, the guarantee condition is one of the most important supplementary mechanisms for structuring the parties' relationship and determining the scope of liability, and it may lead either to an expansion of liability or to a limitation of the obligor's liability. From the perspective of expanding liability, a guarantee condition can extend contractual liability beyond general rules and render the obligor responsible even for outcomes that would not ordinarily fall within the scope of their contractual obligations, such as undertaking compensation for losses arising from slight fault or even without fault (1). Such a condition is consistent with Article 10 of the Civil Code and the principle of freedom of contract, provided that it does not contradict the essential nature of the contract and does not generate excessive uncertainty (2). Conversely, a limitation-of-liability condition is a major tool for transactional risk management, and within the boundaries of mandatory rules, parties may restrict the amount of damages or the scope of liability—for example, by setting a cap on compensation or exempting liability in cases of force majeure (4). Nevertheless, both types of conditions must comply with fundamental legal principles, including the prohibition of excessive uncertainty, the observance of transactional fairness, and the absence of conflict with public order (3). From a juristic perspective as well, conditions that expand or limit liability are enforceable so long as they do not contradict overarching legal-religious norms, and Imami jurists have considered them valid when the boundaries of responsibility are sufficiently determinate (8).

Another important issue is the possibility of inserting a guarantee condition into fiduciary contracts—such as deposit (*wadi'ah*), gratuitous loan for use (*'ariyah*), *mudarabah*, and partnership—where, under Articles 635–642 of the Civil Code, a trustee is generally not liable unless there is transgression or negligence. The core question is whether a guarantee condition may be stipulated in such contracts so as to broaden the trustee's liability. Many Iranian jurists, relying on the principle of freedom of contract and Article 10 of the Civil Code, regard such a condition as valid, provided that it does not alter the nature of the contract and convert it into a non-fiduciary agreement (5). By contrast, some legal analyses maintain that if a guarantee condition in fiduciary contracts removes the fiduciary character, it contradicts the essential nature of the contract and is therefore void (2). In juristic doctrine, the well-known Imami view likewise considers a guarantee condition in a fiduciary contract unenforceable where it changes the contract's nature; however, a limited or qualified guarantee condition—confined to specific categories of loss—has been deemed acceptable (3). In addition, the relationship between the guarantee condition and the no-harm principle is significant, because if a guarantee condition imposes an unjust and non-customary burden of loss on one party, it may be inconsistent with that juristic rule and, as a result, be unenforceable (6). Accordingly, the validity of the guarantee condition in contractual liability is always assessed in interaction with juristic principles, mandatory rules, the essential nature of the contract, and contractual justice.

The Legal Effects of the Guarantee Condition

From a legal standpoint, the guarantee condition plays a fundamental role in transferring risk from the principal obligor to the guarantor and is therefore recognized as one of the mechanisms that stabilizes obligations in transactions. When the parties incorporate a guarantee condition into a contract, liability arising from non-performance, delay in performance, or the occurrence of loss is shifted from the obligor to the guarantor; in this way, transactional risk is placed upon a person who has contractually accepted it (1). Another significant effect of the guarantee condition is the reduction or removal of the burden of proving fault, because once the condition is stipulated, the creditor no longer needs to establish the obligor's fault; the mere occurrence of non-performance or loss is sufficient to trigger the guarantor's liability, without raising issues of fault, transgression, or negligence (5). This feature has made the guarantee condition an effective risk-management tool in many banking contracts, construction agreements, and civil partnerships (4). Furthermore, the guarantee condition strengthens the creditor's position, because with the existence of a guarantor, the creditor gains a personal or proprietary backing for the realization of their right rather than relying solely on the obligor's financial capacity or good faith. In this manner, the guarantee condition enhances the creditor's legal security and performs a function comparable to both traditional and modern security instruments (2).

Another major effect of the guarantee condition is the reinforcement of creditor rights and the enhancement of contractual stability and certainty, because through this condition the creditor gains access to a broader set of enforcement assurances and, in the event of loss, may proceed against the guarantor without complex evidentiary formalities (8). This characteristic is particularly important in contracts exposed to high levels of risk, such as economic volatility, delivery delays, or the possibility of default. In practice, the guarantee condition makes the contract less dependent on the conduct and performance of the principal obligor and moves it toward a degree of certainty and predictability that is treated as a foundational principle in contract law (3). The guarantee condition also strengthens the contractual legal structure by creating an independent undertaking for the guarantor and reduces disputes arising from performance-related disagreements, because in the event of conflict the creditor can

satisfy the claim through the guarantor's contractual liability (6). Moreover, the presence of a guarantee condition facilitates greater commercial trust, smoother exchanges, and lower transaction costs, because the parties—aware of guaranteed responsibility—perceive a lower probability of contractual failure and can evaluate the contract's economic viability with greater confidence. Overall, the guarantee condition promotes transactional order and supports the economic efficiency of contracts.

The Role of the Guarantee Condition in Reducing Transactional Risk

Economic and Legal Analysis

From both economic and legal perspectives, the guarantee condition is one of the most important risk-allocation tools in transactions, because by transferring the burden of responsibility from the principal obligor to the guarantor, it redistributes the risk structure within the contract and enables the parties to decide more transparently about the consequences of non-performance (1). In economic analysis, the guarantee condition functions similarly to insurance: it shifts the risk of default or delay away from the creditor and places it on a party who possesses the financial capacity or specialized competence required to manage it (4). This risk transfer reduces transaction costs, because the creditor is no longer compelled to incur additional costs for assessing the obligor's solvency or pursuing performance, thereby facilitating exchanges and increasing the speed of economic circulation (2). In addition, by reducing uncertainty associated with potential risks, the guarantee condition strengthens contractual stability and increases the predictability of legal relations (3). From a legal standpoint as well, the guarantee condition—especially in high-risk contracts such as construction, banking, investment, and installment sales—clearly reduces the likelihood of default, because the guarantor provides an immediate and effective enforcement mechanism for obligations, allowing the creditor to proceed promptly against the guarantor in case of breach (5). As a result, by combining economic and legal approaches, the guarantee condition is among the most effective mechanisms for risk reduction in contemporary contracts, and its contribution to economic security and the reduction of uncertainty is substantial.

Application of the Guarantee Condition in Different Types of Contracts

In most contemporary contracts, the guarantee condition plays a central role as one of the most effective mechanisms for risk reduction and the assurance of contractual performance. In a sale contract, it may be stipulated—either as a condition of result or a condition of action—to guarantee product quality, the soundness of the subject matter, and the obligation of delivery, so that the seller becomes responsible for any defect, destruction, or non-conformity even where no fault is attributable to the seller (1). In lease agreements, the guarantee condition is widely used, particularly regarding defects in the leased property, compensation for losses resulting from use, and the guarantee to return the property in its original condition, and many legal practices view it as a factor that strengthens the lessor's rights and reduces litigation (4). In *mudarabah* and various forms of partnerships, the guarantee of the agent or investment manager—intended to ensure preservation of capital or realization of profit—constitutes a major issue in the jurisprudence of transactions; Imami jurisprudence generally presumes the non-liability of the agent unless the condition is structured in a manner that does not contradict the essential nature of the contract and is accepted as a binding undertaking (3). In agency and service contracts as well, guarantee conditions are used to ensure proper performance, compensate losses arising from negligence or error, and

guarantee service quality, thereby increasing contractual reliability and reducing ambiguity concerning the scope of the agent's or service provider's responsibility (2). In Islamic banking, the guarantee condition plays a vital role in structures such as *murabaha*, *istisna'*, partnership financing, and interest-free loans, because banks employ customer guarantees or third-party guarantors to manage default risk, secure repayment, and control operational risk; in this sense, the guarantee condition is treated as a key instrument within credit assessment and Shariah-compliant legal risk management (5). Thus, as a flexible and multi-purpose institution, the guarantee condition performs a foundational function in sustaining transactional relations and reducing risk across a wide spectrum of traditional and modern contracts.

Comparison of the Guarantee Condition with Other Security Institutions

The guarantee condition, as a contractual mechanism for strengthening obligations, differs significantly from classical guarantee institutions such as contractual guarantee, assignment of debt, and personal suretyship. Contractual guarantee is traditionally based on the transfer of liability from the principal debtor to the guarantor, whereas a guarantee condition is usually created as a condition of result or condition of action incorporated within an existing contract and does not independently effect a transfer of liability unless the parties expressly agree to such an outcome (1). In contractual guarantee, the guarantor replaces the debtor and the original obligation may be extinguished; however, under a guarantee condition, the guarantee often remains an accessory obligation, preserving the creditor's legal relationship with the original debtor (2). Assignment of debt (*hawala*) similarly operates through the transfer of a claim to a third party, while a guarantee condition does not produce such a transfer and instead imposes an additional liability upon the guarantor (5). Personal suretyship (*kafala*) concerns the production or appearance of a person rather than compensation for contractual loss, and therefore its legal function differs fundamentally from that of the guarantee condition (4).

The guarantee condition must also be distinguished from penalty clauses. A penalty clause represents a predetermined financial sanction arising from breach of contract and functions primarily as pre-agreed damages, whereas the guarantee condition typically transfers or expands responsibility for performance or compensation to another person (3). In other words, a penalty clause is generally triggered by breach or fault, while a guarantee condition may establish liability even in the absence of fault, thereby enhancing its effectiveness as a transactional risk-reduction mechanism.

The distinction between the guarantee condition and proprietary security devices such as collateral, pledge, and bank guarantees is equally significant from both legal and economic perspectives. Collateral and pledge arrangements possess a proprietary nature and grant the creditor priority rights over a specified asset, whereas a guarantee condition creates a personal obligation whose enforceability depends on the guarantor's financial capacity rather than the value of secured property (6). In a pledge, the creditor's right of recovery is limited to the pledged asset, but under a guarantee condition the creditor may pursue the guarantor more freely without being restricted to a specific property (5). Bank guarantees, moreover, constitute institutional mechanisms largely independent from the underlying contract, whereby the bank undertakes to pay upon demand; by contrast, a guarantee condition typically lacks such independence, and the guarantor's liability remains connected to the principal contractual relationship (4).

From an advantages perspective, the guarantee condition is flexible, relatively inexpensive to implement, capable of incorporation into virtually all types of contracts, and effective as a risk-allocation mechanism that

enhances contractual predictability (3). Nevertheless, it faces limitations such as potential invalidity where it contradicts the essential nature of the contract, creates excessive uncertainty, or involves an incapable guarantor—limitations less frequently encountered in formal instruments such as bank guarantees (1). Overall, the guarantee condition occupies an intermediate position between personal security and contractual flexibility, functioning as a complementary mechanism rather than a complete substitute for other security institutions.

Challenges and Controversial Issues

The validity of the guarantee condition constitutes one of the most debated issues in both jurisprudence and legal doctrine. Although general principles emphasizing fulfillment of contracts and adherence to agreed conditions support the validity of contractual stipulations, jurists have disagreed regarding the scope of these principles as applied to guarantee conditions (3). Some jurists accept guarantee conditions in all contracts provided they do not contradict the essential nature of the agreement, whereas others—particularly regarding fiduciary contracts such as gratuitous loan and deposit—consider such conditions incompatible with the contractual nature of trust-based arrangements and therefore regard them as impermissible (8).

Another objection concerns the potential conflict between guarantee conditions and traditional liability doctrines, especially where liability without fault is imposed upon the guarantor. Certain scholars argue that such arrangements may exceed the legitimate framework of responsibility recognized in classical legal theory (2). From a civil law perspective, the guarantee condition may also encounter tension with principles of contractual freedom and rational justification of contractual terms; where the condition disrupts the economic balance of the contract, it may fall within doctrines prohibiting excessive uncertainty or contractual imbalance (1). Consequently, the validity of a guarantee condition depends upon its compatibility with the nature of the contract, juristic foundations, and general principles of contract law.

Within Iranian civil law, one of the most significant analytical challenges concerns the possible conflict between guarantee conditions and the principle of fault-based liability. Because Iranian civil liability doctrine traditionally relies on fault as a foundational basis of responsibility, clauses establishing liability without fault may be viewed by some jurists as inconsistent with public-order considerations governing the distribution of liability (5). In Imami jurisprudence as well, serious doubts persist regarding the permissibility of guaranteeing loss of entrusted property, since fiduciary relations are fundamentally based on the absence of liability, and imposing guarantee obligations may transform the legal nature of the contract, thereby giving rise to substantial doctrinal disagreement (3).

From an economic standpoint, excessive use of guarantee conditions may also disturb contractual equilibrium. Imposing disproportionate responsibilities upon one party can increase transaction costs, reduce economic flexibility, and even discourage economic actors from entering high-risk contracts (4). In certain situations, banks and financial institutions rely heavily on guarantee clauses to impose substantial operational burdens upon guarantors, a practice that has been criticized from the perspective of contractual justice (6). Accordingly, although the guarantee condition represents a powerful mechanism for risk allocation, improper drafting or excessive application may undermine economic efficiency, impose unreasonable financial burdens, and conflict with fundamental principles of civil liability. These challenges collectively highlight the necessity of careful legal analysis and prudent contractual drafting when incorporating guarantee conditions into contractual instruments.

Conclusion

The guarantee condition in Imami jurisprudence and Iranian civil law is recognized as one of the most effective mechanisms for strengthening contractual obligations and managing risk within contractual relations. Its function in transferring risk, ensuring performance of obligations, reducing the likelihood of default, and enhancing the predictability of transactional relationships has secured it a significant position within the legal system. From a risk-management perspective, the guarantee condition enables economic actors to structure their obligations with greater confidence and, by reducing uncertainty, minimize transaction costs and disputes arising from performance or breach of contract.

Nevertheless, existing ambiguities concerning the validity of guarantee conditions in fiduciary contracts, the limits of their legitimacy, and their reconciliation with principles such as the prohibition of excessive uncertainty and established rules of liability highlight the necessity for legislative clarification and reform. In particular, it is advisable for the legislator to adopt explicit provisions addressing the validity of guarantee conditions across different contractual categories, the permissible scope of liability limitation or expansion, and the manner in which such conditions affect the legal liability of the obligor, thereby promoting uniform judicial practice and legal certainty.

At the contractual level, economic actors and contract drafters are encouraged to incorporate guarantee conditions with precision and according to clearly defined models. This includes specifying the scope of the guarantor's liability, conditions of recourse, treatment of future or contingent debts, mechanisms for enforcement, and the use of complementary security instruments to eliminate potential contractual gaps.

In the field of Islamic banking and modern financial contracts, effective utilization of guarantee conditions may facilitate the development of more reliable instruments, including Sharia-compliant guarantees and financing structures such as *istisna'*, *murabaha*, partnership arrangements, and lease-to-own contracts. By establishing clear mechanisms of responsibility, these arrangements can substantially reduce operational and credit risk.

Ultimately, when carefully drafted and supported by a transparent legislative framework, the guarantee condition can function as one of the principal pillars of risk management in modern contractual systems and Islamic banking, contributing significantly to legal security and economic efficiency.

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All authors equally contributed to this study.

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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