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Legal Analysis of the Dispute Resolution Mechanism for Disputes Arising from Government Asset Monetization Contracts

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ABSTRACT

The mechanism for resolving disputes arising from government asset monetization contracts constitutes one of the most significant, yet comparatively underexamined, legal dimensions of the Resolution of the Supreme Council of the Heads of the Branches of Government and its Implementing Regulation. Given the contractual nature of most asset monetization methods, including sale, lease, partnership, and barter arrangements, the existence of a transparent and independent dispute resolution mechanism consistent with the fundamental principles of private law plays a crucial role in ensuring legal certainty and fostering the confidence of contracting parties, particularly private-sector investors. Focusing on a legal analysis of the dispute resolution mechanism established under the Implementing Regulation on Government Asset Monetization, this study examines the extent to which that mechanism conforms to such principles as freedom of contract, the impartiality of the dispute resolution authority, the right of access to a fair hearing, and contractual equilibrium. The findings indicate that concentrating dispute resolution authority in administrative or quasi-administrative bodies affiliated with the government, while restricting recourse to courts or independent arbitration, may weaken the position of the private contracting party and exacerbate legal imbalance. Accordingly, the effectiveness of the government asset monetization policy depends on the adoption of independent, specialized, and impartial mechanisms for dispute resolution.

Keywords: *Contractual Dispute Resolution; Government Asset Monetization; Legal Certainty; Arbitration and Adjudication; Contractual Equilibrium*

Introduction

In recent years, the issue of enhancing the efficiency of public assets and optimizing the utilization of government property has become one of the fundamental challenges facing Iran's legal and economic system. The considerable volume of non-productive assets, fiscal pressures arising from budget deficits, and limitations on public resources have led the government to adopt policies aimed at increasing the economic productivity of public property through transfer, partnership, or joint utilization with the private sector. In this context, the Resolution of the Supreme Council of the Heads of the Branches of Government concerning the monetization of government assets, as a major and

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extraordinary policy decision, has acquired a distinctive position within the country's legal order and, by establishing specific mechanisms, has opened a new avenue for regulating relations between the government and private parties. Nevertheless, the significance of this Resolution is not confined to its economic dimensions; rather, its profound legal implications, particularly in the fields of private law and contract law, render it a subject deserving careful and critical analysis.

The Government Asset Monetization Resolution and its Implementing Regulation provide for a variety of legal instruments, including sale, lease, partnership, barter, and other contractual arrangements, which by their nature fall within the domain of private law. Although the government enters this sphere with the objective of realizing public interests and improving economic efficiency, it inevitably assumes the position of a contracting party; a position that requires adherence to fundamental principles of private law, including freedom of contract, the binding force of contracts, good faith, contractual equilibrium, and civil liability. At the same time, the particular structure of the Resolution, the concentration of decision-making authority, the provision of immunities, and the imposition of severe administrative and criminal sanctions raise the fundamental question of whether relationships arising from the monetization of government assets can still be regarded as governed by the classical logic of private law, or whether they constitute an exceptional and imbalanced legal regime that marginalizes the principles of contract law.

Another prominent yet challenging feature of the Implementing Regulation on Government Asset Monetization is its provision of criminal sanctions and its threat of prosecution and punishment against government decision-makers and managers; a matter that directly affects the process of forming contractual intent and the quality of legal decision-making. This situation not only places the will of government managers under pressure but also indirectly affects the private contracting party, creating an atmosphere of uncertainty, excessive caution, and, at times, distrust in contractual relations. Under such circumstances, a fundamental question arises as to whether the threat of criminal sanctions can constitute an appropriate instrument for safeguarding the public interest in economic contracts, or whether it instead undermines legal certainty, reduces predictability, and ultimately diminishes the effectiveness of the asset monetization policy.

In addition to the issue of sanctions, the mechanism for resolving disputes arising from asset monetization contracts is of particular importance. Restricting access to independent judicial authorities, concentrating adjudication within administrative or quasi-administrative structures, and granting immunity to certain decision-makers may seriously disturb the legal equilibrium between the contracting parties. The experience of developed legal systems demonstrates that attracting investors and ensuring effective private-sector participation depend, above all, on the existence of transparent, impartial, and reliable mechanisms for dispute resolution. From this perspective, the legal analysis of the dispute resolution mechanism established under the Asset Monetization Resolution is not a peripheral issue but rather constitutes one of the essential pillars for assessing the success or failure of this policy.

The present study adopts an analytical-comparative approach, with particular emphasis on the foundations of private law, and seeks to move beyond treating the Government Asset Monetization Resolution merely as an administrative decision or economic policy by examining it within the framework of fundamental concepts of contract law, civil liability, and legal certainty. In doing so, alongside an analysis of Iranian domestic law, the study draws upon the achievements of selected legal systems, particularly English and French law, in order to demonstrate how a balance may be achieved among the public interest, economic efficiency, and the preservation of private-law principles. The fundamental hypothesis of this research is that the sustainable success of the asset monetization

policy lies not in weakening the contractual rights of private parties, but in strengthening legal certainty, reducing legal risk, and redefining the role of the government as a committed and accountable contracting party.

Legal Nature of the "Dispute Resolution Committee" Established under the Asset Monetization Implementing Regulation

When the government acts in a proprietary capacity and enters into economic contracts, it is treated in the same manner as private persons, and disputes arising from breach of obligation, delay, or termination are resolved on the basis of contractual liability through judicial or arbitral mechanisms; an approach that ensures legal certainty and promotes the confidence of the private contracting party.

Examination of the Voluntary or Quasi-Judicial Nature of the Dispute Resolution Committee from the Perspective of Contract Law

The resolution of disputes arising from government asset monetization contracts constitutes one of the most important legal dimensions of the Resolution because such disputes lie at the intersection of public, administrative, and private law, although from the perspective of the non-governmental party they are predominantly contractual in nature. Article 14 of the Implementing Regulation on Asset Monetization establishes a two-stage mechanism: first, the dispute is referred to a three-member "Dispute Resolution Committee" selected by the High Board for Asset Monetization; and, if the parties do not agree with the Committee's opinion, the matter is referred to specially designated judicial branches. Under Iranian civil law, pursuant to the principle of freedom of contract, the parties may also agree on the method of dispute resolution. Accordingly, mechanisms such as arbitration or settlement are contractual in nature when they are based on mutual consent. In the case of the Asset Monetization Dispute Resolution Committee, although its members are appointed by the High Board, the Committee's opinion becomes binding only where the parties agree to it. Consequently, its decision is not binding in itself and, in this respect, resembles mechanisms such as jointly appointed expert determination or amicable settlement. If the Committee's opinion is not accepted, the dispute is referred to specially designated judicial branches, whose decisions are final. Accordingly, the Dispute Resolution Committee primarily performs the function of a preliminary stage for consensual settlement before litigation rather than that of a quasi-judicial body empowered to issue binding decisions. Furthermore, the note to Article 14, which makes the High Board for Asset Monetization's interpretation controlling in disputes among government bodies, concerns intra-governmental disputes and should not be extended to contractual relations with private parties.

From the perspective of contract law, the Dispute Resolution Committee established under Article 14 is essentially a mediatory institution of a predominantly voluntary and contractual nature, intended to facilitate dispute resolution and reduce resort to the courts. Since its decisions are non-binding, it cannot properly be characterized as a quasi-judicial authority.

The Effect of the Structure of the Dispute Resolution Committee on the Principles of Impartiality and Independence of the Adjudicatory Authority

The principles and rules of adjudication, together with its procedural formalities, constitute the substance of civil proceedings. Procedural principles, which give rise to procedural rules, establish the foundations of a fair trial, while those rules provide the conditions necessary for observance of the principles. One of the fundamental principles of adjudication is judicial impartiality, which is conceptually distinct from judicial independence. (1)

Prior to the enactment of the Public Procurement Act, legislation such as the Public Accounting Act and the Government Transactions Regulation did not provide any authority other than the courts for hearing complaints submitted by tender participants during the tender process or before or after the conclusion of a contract. The Public Procurement Act, however, addressed this matter by establishing a body known as the "Complaints Review Board." This body, which possesses a quasi-judicial character, was established to adjudicate disputes between tenderers and contracting authorities, and its statute was also approved by the Islamic Consultative Assembly pursuant to Article 7 of the Public Procurement Act. (2)

Any analysis of the effect of the structure of the Dispute Resolution Committee established under Article 14 of the Implementing Regulation on Government Asset Monetization would be incomplete and reductionist if it failed to consider the private-law foundations governing the principles of impartiality and independence of the adjudicatory authority. Although the Committee formally appears to be an administrative institution originating in a resolution of the High Board for Asset Monetization, once its jurisdiction extends to disputes arising from reciprocal contractual relationships between the government and private parties, the fundamental principles of contract law and the minimum guarantees of a fair hearing—even within non-judicial mechanisms—become applicable. Within this framework, the institutional structure of the Committee, the composition of its members, the manner of their appointment, and its organizational relationship with one of the disputing parties, namely the government, directly affect the possibility of ensuring impartiality and independence.

The principle of impartiality of a dispute resolution authority in private law is not merely a procedural rule; it is also rooted in contractual good faith and the structural equilibrium between the parties. When contracting parties designate an institution to resolve disputes, that institution is expected to occupy a position of both subjective and structural neutrality in relation to them. This expectation is connected with rules such as the prohibition of conflicts of interest and the principle that one may not simultaneously combine personal interest with the authority to impose detriment. In other words, neither party should be permitted to impose a dispute resolution body that is organizationally or financially dependent upon itself, since under such circumstances the consent of the other party may be regarded as merely formal or impaired. Nevertheless, the structure of the Dispute Resolution Committee under Article 14 of the Asset Monetization Regulation may cast doubt on the principle of impartiality. The Committee is established within the asset monetization framework and under the authority of the High Board for Asset Monetization, while its members are selected directly or indirectly from governmental institutions. From a private-law perspective, this means that the government, itself a potential party to the dispute, occupies a dominant position in determining the dispute resolution body. Even where no explicit bias occurs in practice, this institutional arrangement may create a reasonable apprehension of partiality.

The importance of this issue becomes particularly evident in disputes arising from asset monetization because such disputes frequently concern asset valuation, performance of contractual obligations, fulfillment of contractual conditions, or termination of transactions. In these situations, the government acts as a party to a reciprocal contract, and the principle of equality of the parties requires that the dispute resolution authority be institutionally independent from both sides. The Committee's integration into the government's administrative structure makes the realization of this expectation difficult. To mitigate this problem, the Regulation provides that the Committee's opinion becomes binding only with the agreement of the parties. This condition is highly significant from the perspective of private law because the consent of the private party may be interpreted as a knowing acceptance of an authority possessing limited independence. Nevertheless, such consent can be regarded as genuine only where it is given under

conditions of equilibrium and without structural pressure, whereas in practice the government's economic and institutional superiority may mean that the private party's acceptance of the Committee's opinion is not entirely voluntary.

Challenges also arise with respect to the independence of the adjudicatory authority. Independence does not merely mean the absence of direct instructions in a particular case; rather, it concerns the institutional status of the decision-making body. The Committee's structural dependence upon the High Board and executive agencies creates the possibility that its decisions may be influenced by broader asset monetization policies, institutional pressures, or the government's financial interests, a situation considerably removed from the concept of independence applicable to institutions such as arbitration or professional mediation. At the same time, by providing for ultimate recourse to specially designated judicial branches, the Regulation implicitly recognizes the limitations affecting the Committee's independence and impartiality. This confirms that the Committee serves primarily as a preliminary mechanism for managing and reducing disputes rather than as a complete substitute for judicial adjudication or independent arbitration.

Because of its institutional dependence on the government, the structure of the Asset Monetization Dispute Resolution Committee faces challenges regarding impartiality and independence. These challenges can be justified only insofar as the Committee remains a voluntary, non-binding mechanism complementary to judicial adjudication and insofar as the private party's consent to accept its opinion is genuine and informed. Otherwise, excessive reliance on this mechanism may undermine contractual equilibrium and the legal legitimacy of the dispute resolution process in asset monetization transactions.

Legal Validity of the Decisions of the Dispute Resolution Committee and Their Effects on Asset Monetization Contracts

From a private-law perspective, the legal validity of the decisions of the Dispute Resolution Committee concerning disputes arising from government asset monetization contracts depends upon the nature and limits of the authority conferred upon it. Thus, if the Committee merely performs an advisory administrative function, its decisions lack binding judicial effect and do not preclude the contracting parties from referring their disputes to ordinary courts or arbitration. Even if quasi-arbitral authority were conferred upon the Committee, its decisions would be binding upon the parties only where they had been accepted on the basis of valid contractual consent and within the framework of Articles 10 and 454 of the Code of Civil Procedure [all persons having legal capacity to bring an action may, by mutual agreement, refer their dispute to one or more arbitrators, whether or not the dispute has already been brought before a court and, if proceedings have commenced, at any stage thereof]. Otherwise, deprivation or restriction of the right of access to justice and the imposition of definitive effects upon the contract would be incompatible with the principle of the obligor's accountability under Articles 219 and 221 of the Civil Code [Article 219: Contracts concluded in accordance with the law are binding upon the contracting parties and their legal successors unless they are rescinded by mutual consent or terminated on a lawful ground. Article 220: Contracts bind the parties not only to what has expressly been stipulated therein but also to all consequences arising from the contract by virtue of custom, usage, or law. Article 221: Where a person undertakes to perform an act or to refrain from performing an act and breaches that undertaking, that person is liable for the loss sustained by the other party, provided that compensation has been expressly stipulated, is customarily implicit in the undertaking, or is required by law] and with the right of access to the courts. Accordingly, the effects of the Committee's decisions on asset

monetization contracts must be interpreted restrictively and cannot independently alter or terminate a contract or extinguish the contractual liability of either the government or the private party, except to the extent permitted by the general rules of private law and the parties' agreement.

Applicability or Non-Applicability of the Rules of Nullity and Non-Enforceability to Committee Decisions

As is well established, the legal acts of government managers are confined to the powers delegated to them by law by superior or higher-ranking authorities. Nevertheless, in practice, a manager may enter into a contract with a third party beyond the limits of such authority. At first glance, under the general rules of representation, such a contract would be regarded as non-enforceable; an analysis consistent with the broad wording of Articles 247 [a transaction involving another person's property, except by virtue of guardianship, executorship, or agency, is not enforceable even where the owner is internally satisfied with it; however, if the owner or the owner's legal successor subsequently ratifies the transaction, it becomes valid and enforceable] and 663 [an agent may not perform an act beyond the limits of the authority granted under the agency] of the Iranian Civil Code, since those provisions do not distinguish between natural and legal persons. A closer examination, however, demonstrates that the legal status of such transactions is not invariably limited to non-enforceability. In certain circumstances, particularly where there is an express or emphatic statutory provision, the argument for nullity is strengthened, while in other particular circumstances the validity of such transactions may be defended. The reason for this differentiated approach is that treating all such transactions as absolutely non-enforceable may, in some cases, cause irreparable harm to bona fide third parties who have had no practical means of accurately verifying the extent of the government manager's authority and who, based on the reasonable assumption that the public official had no personal interest, was subject to administrative supervision and control, and acted within the law and the scope of legally conferred powers, relied upon the government agency and entered into a contractual relationship with it. Conversely, adopting a uniformly strict approach toward such contracts may undermine public confidence in government institutions and generate economic and social insecurity, particularly in contracts involving sovereign functions or matters connected with the public interest, where the adverse consequences may be even more extensive. (3)

Article 14 of the Implementing Regulation on Government Asset Monetization establishes a particular mechanism for resolving disputes arising from asset sale and monetization contracts. Under paragraph 1 of this Article, a three-member "Dispute Resolution Committee" is constituted, whose opinion constitutes the basis for settlement only where the parties to the dispute agree to it. This express condition distinguishes the Committee's decision from judgments of judicial authorities and even from binding arbitral awards, placing it instead within the sphere of voluntary and consensual legal acts. From the perspective of civil law, whenever the legal effect of a decision is dependent upon the parties' consent, that decision acquires a contractual or quasi-contractual character. Within this framework, acceptance of the Committee's opinion may be regarded as a supplementary agreement or an ancillary contractual undertaking arising from the asset monetization contract and is therefore subject to the essential requirements for validity of transactions under Article 190 of the Civil Code, namely intent and consent, legal capacity, certainty of subject matter, and legitimacy of purpose. Accordingly, the binding force of the Committee's opinion does not derive from its institutional authority but from the parties' common intention.

On this basis, the possibility of invoking the rules concerning nullity, non-enforceability, or termination with respect to an agreement accepting the Committee's opinion is not excluded. Where the consent of one of the parties is defective or where the agreement contravenes mandatory rules, public order, or good morals, its validity may be

challenged under the general rules of civil law. This conclusion is also consistent with the structure of Article 14 because the Regulation does not designate the Committee as a substitute for the judiciary and expressly preserves the right to refer the dispute to specially designated judicial branches where no agreement is reached. The Dispute Resolution Committee lies at the intersection of public and private law: on the one hand, it is established within the framework of an administrative regulation and administrative structure; on the other hand, it deals with disputes arising from contracts in which the government acts as a contracting party rather than in the exercise of sovereign authority. Nevertheless, Article 14 expressly provides that the effect of the Committee's decision depends upon the parties' agreement, demonstrating that the Committee lacks inherent jurisdiction to issue binding decisions and that its role is primarily advisory and facilitative.

The treatment of non-enforceable government transactions requires more detailed examination and deeper analysis. Reliance solely upon the general rules of private law and general principles governing transactions may deprive many government contracts that appear prima facie non-enforceable of legal protection without adequately considering their practical consequences. Such an approach may prejudice the rights of bona fide third parties who, without knowledge of the complexities of administrative law or the precise limits of public officials' authority, entered into contracts with public bodies in legitimate reliance upon those institutions and may consequently be denied their substantive rights and suffer irreparable losses if such transactions are treated as categorically non-enforceable. (4)

Accordingly, the standards governing private contracts should not, without modification and reconsideration, constitute the exclusive model for assessing government contracts. Instead, through an approach grounded in public law and drawing upon institutions such as the doctrine of apparent authority, analogical application of certain provisions of commercial law, administrative custom, and the doctrine of curability of defective administrative acts, many such contracts may at least be regarded as enforceable against the government in favor of bona fide third parties. Such an approach is consistent not only with the protection of legitimate expectations and legal certainty but may also play an effective role in strengthening the legal stability of government transactions, protecting persons contracting with the government, and increasing public confidence in the decisions and actions of governmental bodies. (4)

Private-law doctrine likewise emphasizes that agreements concerning dispute resolution—whether arbitration, settlement, or acceptance of a third party's determination—constitute voluntary legal acts. In discussing settlement and arbitration, Katouzian emphasizes that the binding force of these institutions derives not from public authority but from the obligation voluntarily created by the parties themselves. (5) Accordingly, an agreement to accept the opinion of the Dispute Resolution Committee also creates a contractual obligation whose validity is always open to assessment under the general rules of civil law.

One fundamental consequence of recognizing the contractual nature of the Dispute Resolution Committee's decisions is that, even after the parties have agreed to accept them, such decisions are not immune from objections based on nullity or non-enforceability. If it is established that the consent of one party, particularly the private party, resulted from duress, fundamental mistake, or fraud, the validity of the agreement may be challenged by reference to Articles 199 to 203 of the Civil Code. This issue is particularly significant in the context of asset monetization because the government, owing to its economic and institutional position, may indirectly influence the formation of the other party's consent.

A distinction must also be drawn between the “Committee’s decision” and the “parties’ agreement to accept that decision.” The Committee’s decision, in itself, is merely an expert opinion or proposal and lacks any independent binding effect. The legal effect is generated by the parties’ agreement to accept that opinion. Consequently, objections based on nullity or non-enforceability are directed toward the agreement rather than toward the Committee’s decision itself. This distinction prevents confusion between the administrative act—the Committee’s opinion—and the legal act—the parties’ agreement.

Accordingly, the Committee’s decision becomes the subject matter of an agreement, and that agreement, like other transactions, must be lawful, reasonable, and free from an unlawful purpose. If the Committee’s opinion entails a result contrary to mandatory rules or public order, an agreement accepting it will likewise be null and void; a conclusion based upon the general rule concerning the nullity of transactions contrary to public order in Iranian legal doctrine and judicial practice. (6)

Although paragraph 2 of Article 14 of the Asset Monetization Resolution provides certain immunities for members of the High Board and implementing officials, these immunities concern judicial prosecution and criminal or administrative liability and in no way render the Committee’s decisions immune from civil and contractual review. Immunity of individuals must not be confused with the absolute validity of decisions. Under private law, no agreement is excluded from the general rules merely because it is concluded within the framework of an implementing regulation.

Furthermore, the express provision permitting recourse to specially designated judicial branches where the parties fail to reach agreement demonstrates that the Regulation itself recognizes the primacy of judicial jurisdiction and the availability of judicial review. This weakens the position of those who regard the Committee’s decisions as absolute and immune from challenge. Where the agreement that provides the basis for the binding force of the Committee’s opinion is defective under civil law, the court may, in adjudicating the dispute, declare it invalid.

English law likewise draws a clear distinction between binding judicial decisions and consent-based dispute resolution mechanisms. Institutions such as mediation and expert determination become binding only where the parties knowingly and voluntarily undertake to comply with their outcomes. English courts have repeatedly emphasized that the validity of such agreements is subject to the general rules of contract law, including valid consent and the absence of illegitimate pressure. In *Cable & Wireless plc v IBM United Kingdom Ltd* [2002], the court emphasized that an agreement to accept the result of a non-judicial dispute resolution process is valid only where the fundamental requirements of contract formation are satisfied. English law also recognizes undue influence and misrepresentation as grounds capable of invalidating dispute resolution agreements. These doctrines perform functions comparable to the rules governing duress and fraud in Iranian civil law. (7)

English legal doctrine likewise emphasizes that decisions of non-judicial bodies, even where adopted within the framework of public policies or governmental guidelines, remain open to evaluation under contract law when their binding force depends upon the parties’ agreement. (8) This approach demonstrates that, even within the common-law system, the linkage of quasi-administrative decisions to party autonomy opens the door to the application of private-law rules.

Effect of the Committee’s Decision on the Continuation or Dissolution of a Private Contract

The nullity or dissolution of a contract generally results in the invalidity or termination of all its provisions, conditions, and obligations. The issue addressed here concerns the basis, elements, and significant instances in

which certain provisions, conditions, and ancillary or subsidiary obligations may retain independent validity where the principal contract has not been concluded or has become null or dissolved. By virtue of law, party autonomy, and custom and usage, and subject to the essential requirements of validity, certain clauses, such as confidentiality obligations, may themselves constitute independent agreements and remain binding on the parties even if the principal contract is never concluded. Other provisions, such as those governing restitution of reciprocal performances, may constitute independent agreements intended to operate following the dissolution or nullity of the principal contract; such clauses become binding upon dissolution or nullity of the main contract. Still other clauses, such as dispute resolution provisions, remain independently applicable to the parties irrespective of whether the contract continues, is dissolved, or becomes void. (9)

Under Articles 12 and 13 of the Implementing Regulation on Government Asset Monetization, asset monetization contracts are concluded in the form of reciprocal contracts such as sale, lease, partnership, barter, and transfer of usufruct rights. Although one party to such contracts is the government or an entity subject to the Regulation, they are, in terms of their legal nature, private-law contracts governed by the general rules of contracts under the Civil Code. Accordingly, disputes arising from their performance are contractual in nature. Article 14 of the Regulation establishes a “Dispute Resolution Committee” for resolving such disputes but expressly provides that the Committee’s opinion constitutes the basis for resolution only where the parties agree to it. This condition demonstrates that the Committee’s decision does not inherently have a binding or coercive effect on the fate of the contract and cannot independently cause its dissolution, termination, or continuation. Rather, its effect depends upon the intention and acceptance of the parties.

From the perspective of private law, continuation or termination of a contract may occur only through recognized legal grounds such as unilateral termination, automatic dissolution, mutual rescission, or nullity, as provided by law or by agreement. Consequently, the opinion of the Dispute Resolution Committee can, at most, serve as the basis for a new agreement between the parties concerning continuation or termination of the contract; it cannot substitute for party autonomy or mandatory rules governing contractual dissolution. Thus, although the Regulation seeks to facilitate and expedite the settlement of contractual disputes in the asset monetization process by establishing the Dispute Resolution Committee, its requirement that the Committee’s opinion be accepted by the parties prevents the Committee from becoming a body capable of coercively determining contractual relationships.

Under Iranian civil law, the principle of the binding force of contracts, embodied in Article 219 of the Civil Code [under Article 219 of the Civil Code, all contracts lawfully concluded are binding upon the contracting parties and their general or particular successors, and such a contract may be brought to an end only through mutual rescission by both parties or termination on a ground specified by law], requires that binding contracts remain in force except in cases expressly provided by law or where the parties mutually agree otherwise. (10) Sale, partnership, and lease contracts concluded in the asset monetization process are generally binding contracts, and their dissolution therefore requires the occurrence of one of the legally recognized grounds. A decision of the Dispute Resolution Committee does not, by itself, create any such ground.

Under private law, dissolution or continuation of a contract is possible only within the framework of recognized mechanisms such as termination, automatic dissolution, mutual rescission, or nullity. Termination requires the existence of a statutory or contractual right of termination; automatic dissolution results from fulfillment of a resolutory condition or the occurrence of an event that the law recognizes as terminating the contract; and mutual rescission is itself based upon renewed agreement between the parties. In none of these circumstances does the

Dispute Resolution Committee's decision independently produce a conclusive effect. It can become effective only where the parties accept it and transform it into the basis of a contractual act. From this perspective, the Committee's decision more closely resembles an expert opinion or settlement proposal than a binding judgment. As Katouzian explains in his analysis of settlement, a settlement terminates a dispute only when the parties accept it and give effect to it through a voluntary legal act; the same logic applies to the Committee's opinion.

Acceptance of the Committee's opinion may have different effects on the contract. In some cases, the parties may rely upon it to amend contractual terms and agree to continue the contract, thereby giving the Committee's decision a facilitative role in preserving the contractual relationship. In other cases, the Committee's opinion may serve as the basis for the parties' agreement to terminate or mutually rescind the contract; in such circumstances, however, dissolution results from the parties' renewed agreement rather than from the Committee's decision. The important point is that Article 14 of the Asset Monetization Regulation confers no authority upon the Committee to declare a contract terminated or dissolved; it merely refers to the Committee's "opinion," whose legal effect depends on the parties' agreement. Moreover, provision for recourse to specially designated judicial branches in the absence of agreement demonstrates that the ultimate determination concerning continuation or dissolution of the contract rests with the judicial authority. The role of the Dispute Resolution Committee within this legal regime is therefore preliminary, advisory, and non-binding in the process of resolving contractual disputes.

Paragraph 2 of Article 14 of the Asset Monetization Regulation provides immunity for members of the High Board and implementing officials, but that immunity must not be interpreted as insulating decisions of the Dispute Resolution Committee from contractual and civil-law consequences or scrutiny. Such immunity relates solely to the criminal and administrative liability of individuals and has no bearing on the legal validity of the contract or its effects; a distinction accepted in private law. Consequently, the Dispute Resolution Committee's decision can affect the continuation or dissolution of a private contract only where it is accepted through a valid agreement between the parties. That agreement, like other contractual arrangements, is governed by the general rules of civil law and may itself be subject to objections based on nullity, non-enforceability, or termination. Such an interpretation is both consistent with the text of the Regulation and protective against the imposition of institutional will upon contractual relationships.

Jurisdiction of Special Judicial Branches over Asset Monetization Disputes

In pursuit of the objectives of the policy for monetizing public assets and in order to prevent prolonged proceedings and conflicting judicial practices, the designation of special judicial branches with jurisdiction over disputes arising from asset monetization is of fundamental importance.

Scope of the Jurisdiction of Special Branches over Contractual Claims

One of the fundamental principles governing administrative organizations is the principle of the rule of law. According to this principle, all acts and decisions of administrative authorities must be undertaken within the framework of law and must avoid arbitrary conduct and the exercise of personal discretion unconstrained by legal standards. (11) One of the essential characteristics of an administrative system founded upon the rule of law is the existence of judicial supervision over administrative agencies and authorities; accordingly, the legality of administrative activities cannot be ensured without the establishment and exercise of judicial review. (12)

Generally, judicial review of governmental administrative actions in different political systems is exercised according to two common models: the “centralized” and “decentralized” models. Under the centralized model, review of administrative decisions and actions is entrusted to a special authority established exclusively for that purpose, whereas under the decentralized model, ordinary courts, in addition to having jurisdiction over general disputes, are also competent to adjudicate administrative claims. (3)

It appears that, given the establishment of the Administrative Justice Court alongside the ordinary courts and pursuant to Article 173 of the Constitution [under Article 173 of the Constitution, the Administrative Justice Court was established under the supervision of the Judiciary to hear complaints, grievances, and objections by individuals against government officials, units, and regulations and to restore their rights. The President of the Administrative Justice Court is appointed by the Head of the Judiciary], the Iranian judicial system follows a decentralized model of judicial review. On this basis, in principle, all categories of claims involving the government and administrative agencies, including disputes arising from administrative contracts, should be brought before the Administrative Justice Court. (13) Nevertheless, there is disagreement among legal scholars regarding the jurisdiction of the Administrative Justice Court over disputes arising from administrative contracts, which is briefly examined below.

Some legal scholars maintain that the Administrative Justice Court lacks jurisdiction over disputes involving administrative contracts. According to this view, the intention of the framers of Article 173 of the Constitution was to create a forum through which administrative and executive decisions and actions of the government could be challenged. From this perspective, the Administrative Justice Court constitutes a specialized jurisdiction distinct from courts of general jurisdiction, and its competence is limited to matters expressly assigned to it by law. (14) Because existing legislation contains no explicit provision granting the Court jurisdiction over disputes arising from administrative contracts, it is therefore regarded as lacking such competence. Proponents of this position further argue that when the government enters into contracts to meet public needs, it acts in a proprietary rather than sovereign capacity and, accordingly, no distinction exists in this field between the government and other private-law persons. (15)

In contrast, another group of legal scholars recognizes the jurisdiction of the Administrative Justice Court over disputes arising from administrative contracts. According to this view, the Administrative Justice Court is not merely a specialized administrative tribunal existing alongside the ordinary judiciary; rather, under Article 173 of the Constitution, general jurisdiction over all claims involving the government and administrative agencies should be concentrated within that Court. (13) In response to the opposing view, it is further argued that the government, when concluding and performing administrative contracts, acts in the exercise of public authority and that the rules governing such contracts therefore differ in nature from those applicable to private-law agreements. The particular status of administrative contracts as legal acts of the state and their subjection to public-law principles and rules require a specialized system of adjudication and a specialized judicial authority for disputes arising from them. Accordingly, within the framework of its general competence, the Administrative Justice Court is regarded as the competent authority for adjudicating this category of disputes. (13)

The Government Asset Monetization Resolution and its Implementing Regulation provide for adjudication by “special judicial branches” in order to manage disputes arising from asset monetization contracts (Article 14 and Article 9(4)). This arrangement creates a form of special jurisdiction intended to centralize and expedite adjudication but does not alter the legal nature of the underlying disputes.

Despite the involvement of the government or public entities, asset monetization contracts substantively fall within the domain of private law because their subject matter consists of the transfer or utilization of immovable assets through contracts such as sale, lease, partnership, or barter, all of which are governed by the general rules of contracts and the requirements of Article 190 of the Civil Code. In these relationships, the government appears as a contracting party and owner of the relevant asset rather than as an authority exercising sovereign power.

Iranian civil-law doctrine, particularly the works of Katouzian, emphasizes that the criterion for determining the nature of a contract is the role of the parties and the purpose for which the contract is concluded, rather than the legal personality of the parties themselves. (5) On this basis, disputes arising from asset monetization contracts are private-law claims and their adjudication requires the application of civil-law rules. (10)

The special branches established under the Asset Monetization Regulation do not possess subject-matter jurisdiction inherently different from that of other courts; rather, they represent a form of centralized and specialized competence designed to expedite the adjudication of disputes arising from asset monetization contracts. This objective is particularly apparent in Article 9(4) of the Regulation, which establishes a three-month period for adjudication. The purpose of the regulatory authority is therefore not to alter the nature of the disputes but to facilitate and accelerate the adjudicatory process. From a private-law perspective, these branches may not disregard mandatory rules of civil law. The principle of legality requires the court, when hearing such disputes, to continue to examine the validity of the contract, the existence of termination rights, the effects of termination or nullity, and contractual liability on the basis of the general rules. Although the decisions of these branches are procedurally characterized as final, substantively they remain grounded in the classical principles of civil law.

In asset monetization contracts, the parties' contractual autonomy in determining the method of dispute resolution continues to play a central role. Under Article 14 of the Regulation, the Dispute Resolution Committee is first introduced as a preliminary mechanism, and recourse to the special judicial branches is contemplated only where the parties fail to reach agreement or otherwise resolve the dispute. This sequence demonstrates that the jurisdiction of the special branches is supplementary and residual in character and does not displace the parties' autonomy to provide for contractual dispute resolution methods such as arbitration or other consensual mechanisms.

This structure is consistent with the principle of party autonomy under civil law because the parties may first employ consensual mechanisms to resolve their dispute and, if those mechanisms fail, resort to the courts. At that stage, the special branches effectively perform the same role as ordinary civil courts, albeit with greater concentration and specialization. Moreover, the finality of their decisions should not be interpreted in a manner that undermines the right of defense or the principles of a fair hearing. Such finality concerns only the availability of appellate review and does not prevent the court at first instance from examining all claims concerning nullity, termination, non-enforceability, or contractual liability.

Effects of the Finality of Decisions of the Special Branches on the Parties' Acquired Rights

In its general sense, acquired rights refer to rights lawfully obtained by individuals on the basis of laws, regulations, and political, social, and cultural programs. In other words, any right recognized for citizens by the legislature in the Constitution, ordinary legislation, or other regulations, and which an individual has actually acquired, may be classified as an acquired right.

The term “rights” has several meanings in legal discourse. According to Katouzian, it is used in at least four senses:

1. The body of rules governing social relations among persons.
2. The plural of “right,” meaning a legal privilege or legal capacity enjoyed by individuals vis-à-vis others, such as the right to life or liberty.
3. Salaries or remuneration paid to government employees.
4. The science of law, namely the discipline concerned with studying and analyzing legal rules.

At the foundational level, the concept of acquired rights rests upon reason and the necessity of maintaining stability in social relations. For this reason, Islamic jurisprudence also recognized many rights that had existed prior to Islam through custom and social arrangements by approving them as ratified legal institutions. Such rules principally concern areas such as contracts, unilateral legal acts, and social relations that existed in customary practice before Islam and were necessary for maintaining social order. Jurists have relied on various jurisprudential principles and maxims to recognize and protect these rights, including the principle of *istishab*—presumption of continuity—the maxim prohibiting punishment without prior notice, and comparable principles. Various branches of jurisprudence also recognize numerous examples of acquired rights, including ownership resulting from the revival of wasteland, pre-emption rights, marriage, agency, and other legal relationships historically accorded recognition and protection. (16)

Article 14 of the Implementing Regulation on Government Asset Monetization establishes a two-stage dispute resolution mechanism:

First, the dispute is referred to a three-member Dispute Resolution Committee, whose opinion is binding only where the parties agree to it; and, if no agreement is reached, the matter is referred to specially designated judicial branches, whose decisions are declared final and enforceable. Although this structure appears mandatory in form, from a private-law perspective it has a hybrid character and remains, to a considerable extent, based upon party autonomy.

The disputes covered by Article 14 concern contracts for the sale or monetization of government assets. Despite government participation, these contracts are substantively governed by the general rules of contracts and the principle of party autonomy under Article 10 of the Civil Code. Accordingly, referral to the Dispute Resolution Committee and acceptance of its opinion become binding only through agreement between the parties, meaning that the Regulation preserves contractual freedom at this stage. At the subsequent stage, referral to the special judicial branches and the finality of their decisions merely signify the exhaustion of ordinary means of appeal and the stabilization of the outcome of adjudication; this alone cannot extinguish or restrict acquired rights arising from a valid contract. In civil law and Islamic jurisprudence, the doctrine of acquired rights emphasizes stability in the effects of valid legal acts, and interference with such rights requires either an express statutory basis or the consent of the right-holder. Consequently, even final judgments of the special branches must be interpreted and enforced within the framework of substantive civil-law rules, including the principle of the binding force of contracts and Articles 219 and 223 of the Civil Code. Therefore, notwithstanding its provision for a special forum and the finality of its judgments, Article 14 of the Asset Monetization Regulation remains capable of analysis within the logic of private law and respect for the stability of contractual relationships.

In Iranian civil law, acquired rights constitute a concept formed through the interaction of the jurisprudential principle of respect for property and rights and the principle of the binding force of contracts. (17) Once a valid and

enforceable contract is concluded, it produces legal effects for the parties that are regarded as acquired rights, and the presumption is that such rights continue to exist. (18) Katouzian describes acquired rights as rights created on the basis of a complete and lawful legal situation that the legislature or decision-making authority cannot extinguish or restrict without an express legal basis or the consent of the right-holder. (5) From this perspective, any judicial or quasi-judicial decision, even if declared final and enforceable, must be interpreted within the framework of respect for such rights rather than the reverse.

Article 14 of the Regulation provides that, where the parties do not agree to the opinion of the Dispute Resolution Committee, the dispute shall be referred to special branches designated by the Head of the Judiciary and that the decisions of those branches shall be final and enforceable. From the perspective of procedural law, the term “finality” in this context refers to the unavailability of ordinary appellate or cassation review. The fundamental question, however, is whether such finality can alter the legal nature of the contractual relationship or restrict acquired rights arising from the contract. This question cannot be answered without reference to the foundations of private law.

Under civil law, the principle of the binding force of contracts, embodied in Article 219 of the Civil Code, means that binding contracts cannot be dissolved except by mutual consent or on a legal ground. A decision of a special judicial branch, even where final, does not itself constitute an independent legal ground for extinguishing the contract or rights arising from it unless it is based upon one of the recognized grounds under the Civil Code, such as termination pursuant to a legal right, nullity, or automatic dissolution. Accordingly, the finality of the judgment merely brings the dispute to an end procedurally; substantively, the decision remains constrained by civil-law rules.

Article 223 of the Civil Code [Article 223 provides that “every transaction that has taken place is presumed to be valid unless its invalidity is established,” meaning that every transaction is presumed to satisfy all general and specific requirements of validity unless the contrary is proven] establishes the presumption of validity of transactions. On this basis, any contract lawfully concluded is presumed valid and enforceable unless the contrary is established. A final judgment of a special branch cannot disregard the effects of a valid contract without establishing one of the recognized grounds for nullity or non-enforceability. Iranian civil-law scholarship likewise emphasizes that adjudicatory authorities, even where vested with special powers, cannot decide outside the framework of mandatory civil-law rules.

In practical terms, a judgment of a special branch may require one party to perform an obligation, pay damages, or even terminate the contract. Each of these consequences, however, must be grounded in recognized civil-law rules. An order for performance rests upon Articles 220 and 221 of the Civil Code. Termination requires the existence of a valid statutory or contractual right of termination or resolutory condition. Damages require establishment of breach of obligation and contractual liability. Accordingly, finality means only that the dispute has reached its procedural conclusion before the adjudicating authority; it does not create a new rule capable of coercively extinguishing acquired rights.

Another important consideration concerns the relationship between finality and the principle of legal certainty. Legal certainty requires that individuals be able to rely on the stability of the effects of their contracts. If the final judgments of special branches were interpreted as capable of undermining acquired rights without objective legal criteria, such confidence would disappear and the Regulation’s objective of attracting non-governmental participation in asset monetization would ultimately be frustrated. Private-sector parties will participate in such contracts only where they can have confidence in legal stability and predictability.

Accordingly, a private-law-consistent interpretation of Article 14 requires that the finality of judgments issued by the special branches be construed restrictively. Such finality relates to the procedural stage and must not be regarded as a mechanism for imposing the unilateral will of the government or the High Board upon the private party. In discussing the effect of judicial decisions upon contracts, Shahidi emphasizes that a judicial judgment is declaratory of an existing legal situation rather than constitutive of it, except in exceptional circumstances where the legislature expressly confers such effect. The Asset Monetization Regulation contains no such express provision.

The conditions for the establishment and recognition of an acquired right may be summarized as follows: it must constitute a “right” rather than a tangible object; it may arise from an administrative decision, action, or declaration and is not necessarily confined to rights derived directly from legislation or formally enacted regulations; it must have become established through repetition and continuity as an administrative practice rather than being merely temporary or isolated; it must have arisen over a reasonable period measured according to custom and rational standards; it must be based upon a lawful decision, act, or regulation arising from authority previously conferred by the legislature or derived from parliamentary enactments; and, finally, it must result from the exercise of either discretionary or mandatory administrative competence within the framework of laws, regulations, or previous administrative decisions. Within administrative law, this principle may be analyzed alongside related principles such as legality, the rule-of-law state, the protection of fundamental constitutional rights, legitimate expectations, and non-retroactivity. (19)

Individuals organize their relationships and conduct on the basis of existing laws and decisions. If an administrative authority were permitted, on the basis of future laws or decisions, to invalidate individuals’ past acts and conduct and impose new liabilities upon them, this would be inconsistent with the rationale underlying the principle that punishment cannot be imposed without prior notice and would be considered unjust and unethical. (20) Today, the principle of respect for acquired rights is recognized as one of the principal foundations of legal certainty. According to some public-law scholars, the basis of this principle lies in protecting the exercise of fundamental rights and freedoms as well as safeguarding rights arising from contracts.

In this context, within the French legal system and the jurisprudence of the Constitutional Council, although freedom of contract has not in itself traditionally been regarded as possessing constitutional value, its existence has been considered necessary for guaranteeing other principles having constitutional status. (21) Nevertheless, it should not be overlooked that the principle of respect for acquired rights is closely connected with the principles of non-retroactivity of laws and decisions and legitimate expectations, although some scholars warn against conflating acquired rights with legitimate expectations. When resolving temporal conflicts of laws, a distinction must initially be drawn between acquired rights and mere expectations. Nevertheless, reasonable hopes and legitimate expectations may in certain circumstances occupy a position similar to acquired rights. Thus, where individuals, as a result of legislative action or even legislative silence, acquire a reasonable expectation that a right will arise or continue, that expectation deserves protection and its frustration may be regarded as undesirable because one of the most important functions of law is to create legal certainty and confidence regarding the future.

Although the principle of respect for acquired rights is regarded as an established principle of public law, it is not expressly enumerated among the principles contained in the Constitution of the Islamic Republic of Iran. Nevertheless, traces of the principle can be found in certain ordinary legislation, including Note 6 to Article 7 of the Fourth Development Plan, and it may therefore be regarded as one of the principles established in ordinary laws

and regulations. In practice, however, the principle is rooted less in statutory texts than in the judicial practice of the Administrative Justice Court and constitutes one of the judicial principles developed through administrative adjudication. The absence of a comprehensive administrative law statute may perhaps be regarded as one of the principal reasons why this principle has not received explicit recognition in Iran's legislative system. (22)

Attention must also be given to the note to Article 14, which makes the interpretive opinion of the High Board for Asset Monetization controlling in disputes among government agencies or supervisory bodies. Although this note concerns intra-governmental relations, it demonstrates that, even from the perspective of the drafters of the Regulation, decisions of the High Board and its affiliated bodies possess an interpretive and executive character rather than a substantive character in the sense of creating or extinguishing the private rights of individuals.

Accordingly, from a private-law perspective, the effects of the finality of judgments rendered by the special branches upon the parties' acquired rights are limited and controlled. Such judgments cannot independently extinguish rights created under a valid contract outside the framework of Civil Code rules. Rather, they must be enforced within those rules, and where an apparent conflict arises between the judgment and acquired rights, an interpretation favoring preservation of acquired rights and the principle of the binding force of contracts should prevail.

Under English law, the finality of decisions by specialized dispute resolution bodies, particularly in the fields of government contracts and public-private partnerships, is associated with concepts such as the *finality of decisions* and the *sanctity of contract*. In the common-law system, a fundamental principle is that a contract remains governed by the general rules of contract law even where one party is the government. A final judgment of a court or arbitral tribunal merely resolves the dispute and cannot, by itself, disregard acquired rights arising from a valid contract unless the decision is based upon doctrines such as frustration or illegality. McKendrick emphasizes that finality means immunity from ordinary appellate review rather than the conferral of absolute power to alter the effects of a contract. In *Sulamérica v Enesa*, the English courts emphasized that, even where specialized dispute resolution arrangements are present, respect for the contract and the rights created for the parties must be preserved. (8)

In French law, the concept of *autorité de la chose jugée* expresses the authority of res judicata. A final court judgment has binding authority in relation to the dispute decided, but substantively it remains subject to the rules of *droit civil*, particularly the principle of *force obligatoire du contrat*, expressly recognized in Article 1103 of the French Civil Code. French legal doctrine takes the position that a judicial judgment declares an existing legal situation and cannot, without a statutory basis, extinguish acquired rights arising from a contract. The *droit au juge* and the principle of legal certainty likewise require that individuals be able to rely upon the stability of the effects of their contracts. (23)

Comparison of these two systems with the Asset Monetization Regulation demonstrates that an interpretation consistent with comparative law confirms the same conclusion reached through analysis of domestic private law. The finality of judgments rendered by the special branches is a procedural institution designed to bring disputes to an end and should not be treated as an instrument for weakening acquired rights or the principle of the binding force of contracts. Any contrary interpretation would be inconsistent not only with the foundations of Iranian civil law but also with standards accepted in developed legal systems.

Conclusion

The legal analysis of the Resolution of the Supreme Council of the Heads of the Branches of Government concerning the monetization of government assets demonstrates that, although this policy was designed to enhance economic efficiency and activate public assets, it entails fundamental legal complexities and tensions that, if disregarded, may undermine the stated objectives of the Resolution. The contractual nature of the principal asset monetization methods, including sale, lease, partnership, and other transactional arrangements, requires that the relationships arising from them be analyzed and evaluated within the framework of established principles of private law.

The findings of this study indicate that extensive reliance on the threat of criminal sanctions, particularly under Article 18 of the Implementing Regulation, not only fails to guarantee the public interest but may also weaken the contractual autonomy of government managers and promote excessively conservative and non-transparent conduct. This situation indirectly affects the private contracting party and increases legal uncertainty and risk. From a private-law perspective, intent formed under the shadow of criminal threat does not possess the same quality and freedom of will required for the formation of stable and efficient contractual relationships. Consequently, rather than serving as safeguards of the public interest, criminal sanctions may become deterrents to investor participation and effective private-sector involvement.

In the same context, examination of the mechanism for resolving disputes arising from asset monetization contracts demonstrates that restrictions on access to independent judicial authorities and the weakening of arbitration or other impartial dispute resolution mechanisms constitute major factors reducing legal certainty in this field. Comparative experience, particularly in English and French law, clearly demonstrates that investor confidence and the stability of government contracts depend above all upon the existence of independent, specialized, and predictable institutions for dispute resolution. In the absence of such mechanisms, even the most attractive economic incentives cannot compensate for legal risks.

The ultimate conclusion of this research is that the genuine success of the government asset monetization policy requires redefining the role of the government from that of a commanding sovereign authority to that of a committed and accountable contracting party. Giving priority to private-law principles in interpreting and implementing the Resolution, limiting immunities, replacing criminal threats with civil and contractual remedies, and strengthening independent dispute resolution institutions are not inconsistent with the public interest; rather, they constitute prerequisites for its sustainable realization. Only within such a framework can an appropriate balance be achieved among economic efficiency, legal certainty, and private-sector confidence, thereby preventing government asset monetization from becoming a source of conflict, distrust, and legal inefficiency.

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All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

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Transparency of Data

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