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Original Research Article

Analyzing the Legal Nature of the Central Bank of the Islamic Republic of Iran

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Despite the 60-year activity of the Central Bank in the field of monetary and banking policy-formulation and regulation in the country, there is no explicit statement about the legal nature of this institution in laws, regulations, and legal writings, and the laws only refer to the exclusion of general laws and regulations from this institution, except in cases of specifying the name. Considering the abrogation of this ruling and according to the Central Bank Law, it is necessary to identify the nature of the Central Bank and the rulings and effects governing it in cases of special silence and the establishment of general laws. In this research, we examined the legal nature of the Central Bank among types of public legal entities using an analytical method and a documentary method. According to the examination of the criteria of the Central Bank and its compliance with the four entities of the ministry, government institution, government company, and non-governmental public institution, we must say that although the Central Bank is similar to government companies in terms of some characteristics - especially financial and structural matters - due to the difference in the purpose of activity between these two institutions, especially after the establishment of the general policies of Article 44 of the Constitution, it is not possible to place the Central Bank under the government company with a profit-making purpose. Therefore, the closest category to the Central Bank is the same non-governmental public institution, because in both, there are basic common characteristics such as the purpose of providing public service, the existence of legal independence, including administrative, financial, and relative structural independence from the government, securing the dominant budget through the institution itself, and formation with the permission of the law. Given the conflict between the definitions of non governmental public institutions in the Civil Service Management Law and the Public Accounting Law, it is suggested that, in addition to amending the law, the Central Bank be included under the category of non

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governmental public institutions to remove any ambiguity. It is also better to explicitly mention the Central Bank in the laws related to judicial supervision.

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1 Introduction

Today, most countries in the world have established various institutions to manage and supervise the functioning of their banking systems. One of the most fundamental of these institutions, which can be considered the most important part of the economic governance of each country, is the central bank. The first state bank to issue banknotes in Iran was the Imperial Bank in 1928, whose activities led to the creation of a new banking system in the country and the regulation of government finances (National Bank of Iran, 1978; Teymouri, 1953). In 1930, the government purchased the monopoly on issuing banknotes from the Imperial Bank, and with the establishment of the National Bank, this bank took over this task (Islamic Encyclopedia Foundation, 1998). Given the dual responsibilities of the National Bank in the field of banking regulation and banking duties, the existence of a governing authority in the monetary and banking system was considered essential with the aim of consolidating powers, implementing monetary and fiscal policies, and establishing the necessary coordination, management, and supervision of the banking system (IBENA, 2021). As a result, with the National Bank's monopoly on commercial affairs, the draft of the Monetary and Banking Statute of Iran was prepared in 1958 and in 1960, it was enacted into law and notified to the government. Accordingly, the Central Bank of Iran, which was initially intended to be established as the "mother bank," began operating in Tehran on August 9, 1960. This institution, which is today known by its official name, "Central Bank of the Islamic Republic of Iran," is the official institution overseeing financial and banking services in the country (Islamic Encyclopedia Foundation, 1998; Pourkaveh et al., 1991).

More than sixty years have elapsed since the establishment of the Central Bank of the Islamic Republic of Iran. However, no explicit statement has been made regarding the legal nature of this institution or the legal basis of its acts. Following the Islamic Revolution, the composition of the bodies established for monetary and banking policymaking and implementation has been repeatedly modified through the country's development plans, with members being added or removed over time. Nevertheless, with regard to the legal nature of the Central Bank, the founding legislation and other relevant laws have merely provided general provisions. Article 29 of the Banking and

Monetary Law of the country approved in 1960 stipulates that the Central Bank of Iran is not subject to general laws and regulations related to the government and enterprises established with government capital, unless the Central Bank of Iran is explicitly mentioned in the relevant law; but in cases not foreseen in this law, the bank is subject to the laws related to joint-stock companies. A similar provision has been repeated in the law of 1972. Clause "C" of Article 10 of the Monetary and Banking Law of 1972, with subsequent amendments and additions, stipulates that, except for the cases provided for herein, the Central Bank shall be subject to the laws and regulations related to joint-stock companies. Clause "D" of this article also states that the Central Bank, except in cases expressly provided for by law, shall not be subject to the laws and regulations related to ministries, government companies, and government institutions affiliated with the government, nor to the banking regulations of the present law. Despite the clarity of Clause "C", the scope of the matters mentioned in the law and the nature of these matters, as well as the manner and extent of the rule of the laws governing joint-stock companies regarding the Central Bank are shrouded in ambiguity. The approval of the new Central Bank Law and the repeal of articles related to the legal nature of the bank, including the two aforementioned clauses, and the failure to precisely determine the legal nature of the Central Bank in the law, have added to the previous doubts. Therefore, in the present study, we seek to examine the legal nature of the central bank in the legal system so that by identifying it, we can apply the corresponding legal provisions and effects to these institutions.

Previous studies have examined various aspects of central bank independence and other legal and institutional dimensions of central banks. However, the only study directly relevant to the present research is the book Central Bank Law by Elsan and Bahrami (2024), published by the Monetary and Banking Research Institute. It is noteworthy that only a limited number of pages in Chapter 2 of this book deal with the legal nature of the Central Bank. Despite the desirability of addressing this issue, these few lines, for the first time, have dealt with the legal characteristics, reasons for proving the position, and dual characteristics of the actions and goals of the Central Bank, as far as describing the subject; but ultimately, they do not definitively state the nature of the aforementioned institution among public law entities and, consequently, the rulings and effects governing it.

In terms of structure, the present study first examines instances of public law entities from the perspective of how to distinguish instances and the criteria for distinguishing them from private entities in legislation, and then the status of entities requiring mention of their names among these entities.

After explaining and identifying the types of public law entities, in the second section, the criteria for distinguishing between types of public law entities, including creation and dissolution, purpose, administrative, employment, financial affairs, and judicial supervision in the field of legislation and implementation regarding the Central Bank, will be examined, so that we can finally conclude which type of public law entity the Central Bank is closest to.

2 Limiting the Examples of Public Law Entities

The term legal entity is placed opposite to a real person and is divided into two categories of public law and private law legal entities. At first glance, dividing legal entities into public and private law seems simple, but in practice, it is difficult; because in some cases, despite having one or more of the characteristics of public law entities, such as the appointment of the head of the legal entity by the government, government supervision of that institution, the rule of employment laws over its employees, the existence of sovereign authorities, etc., which indicate that the institution is a public law legal entity, the institution in question is recognized as outside the examples of public law entities. On the other hand, some public law legal entities, despite being within the scope of the government, do not have the duty to provide public service and, like private law entities, perform commercial activities (Ansari, 1998; Saffar, 1994). Therefore, it will be difficult to distinguish between public and private law legal entities.

Public law entities possess several distinguishing characteristics compared with private law entities. However, not all of these characteristics apply uniformly to every public law entity; rather, classification is generally based on the presence of the majority of these characteristics. Public law entities are established and dissolved pursuant to law, are created with government capital, and are subject to special legal provisions governing their financial and commercial affairs. Their employment relationships are governed by specific public-sector employment laws. In addition, they are subject to stringent financial oversight regarding the use of public funds and their financial transactions, and judicial oversight is exercised by designated competent authorities.

By contrast, private law entities are established through the will of private persons and acquire legal personality upon registration with the competent registration authority. They are financed by the capital of private natural or legal persons, enjoy greater autonomy in their financial and commercial affairs, and their employment relationships are governed by the general labor laws. Their internal governance is based on decisions adopted by elected members, and legal disputes involving such entities are adjudicated before the ordinary courts in accordance with the general rules governing litigation and legal defense (Afshari, 2015).

This section first examines the categories of public law entities recognized under Iranian legislation and the challenges associated with their classification in order to determine the legal category under which the Central Bank may properly be classified. It then examines the legal category to which the Central Bank is expressly assigned under the Monetary and Banking Law, as well as the relationship between that category and the various types of public law entities.

2.1 Legislative Challenges in Identifying Examples of Public Law Entities

There is disagreement in the classification of public law legal entities: The Public Accounting Law, in Article 130, has mentioned four categories of public law legal entities, the definitions of each of which are given in Articles 2, 3, 4, and 5 of this law, and includes ministries, government institutions, government companies, and non-governmental public institutions. Article 130 of this law also stipulates that all existing agencies have the opportunity to adapt their entities to one of the four forms within the time period specified in the article, and in the event of non-compliance and the expiration of the period, the said institutions are considered government institutions. A similar fourfold classification is adopted in the Civil Service Management Law. However, in addition to the four categories mentioned above, Article 5 of that Law introduces the broader concept of an executive agency, which also includes entities to which the application of the Law requires express statutory mention by name. In addition, in order to organize existing institutions with ambiguous nature, Article 2 of this law stipulates: “All organizations that are mentioned in the Constitution are recognized as government institutions.” Article 29 of the Sixth Development Program Law, by mentioning numerous examples of executive bodies and citing them in other laws and regulations, took a new step in expanding the scope of types of public law legal entities and named the entities to which the inclusion of one of the four above-mentioned titles could be questioned. The Law on Promoting the Health of the Administrative System and Combating Corruption also defined another type of subject in terms of its beneficiaries, in addition to the four above-mentioned categories, as “private institutions providing public services,” which, despite the inclusion of some specific laws, are classified as private entities due to their enjoyment of public power privileges.

Despite legislative efforts to frame the institutions under the public law personality, there is still ambiguity in the nature of some of them: the Executive Headquarters of the Imam's Decree, local councils, the Iranian Broadcasting Organization[1], the Central Bank, the Free Zones Organization, etc. are among its examples. Another inconsistency concerning the legal nature of these institutions and their classification within the four categories of public legal entities arises from Article 40 of the Law on the Accession of Certain Articles to the Law on Regulating Part of the Government's Financial Regulations (II). This provision states: "Legal entities whose operating funds are wholly or partially financed from the public budget, and whose legal form does not fall within the definitions set out in Articles 2, 3, 4, and 5 of the Public Accounting Law of the Country, shall, with respect to the use of such public funds and the implementation of the relevant financial regulations, be treated as non-governmental public institutions and organizations." However, the relationship between this provision and Article 130 of the Public Accounting Law remains unclear.

The final will of the legislator in defining the executive branch is stated in Clause "P" of Article 1 of the Seventh Development Plan Law, and in this clause, the executive branch includes ministries, government institutions subordinate to the executive branch, and government companies subject to Article 4 of the Public Accounting Law and Article 4 of the Civil Service Management Law. Accordingly, non-governmental public institutions, government institutions outside the executive branch, and government companies not covered by the aforementioned articles are not subject to the definition mentioned in the article and the provisions imposed on the executive branch in this law. Of course, Note 1 of this clause states that the definition of the executive branch in other laws remains valid with respect to this law.

As stated, it can be seen that despite the legislator's numerous efforts in providing types of public law entities and their definitions, in practice the only division with unique definitions is the four-fold division provided in the Accounting Law and the Management Law, and numerous definitions have also been imposed on these instances in these two laws. Despite accepting the

[1] Despite the fact that the name of the Islamic Republic of Iran broadcasting is mentioned in the Constitution, in accordance with Article 2 of the Management Law, this institution is considered a government institution; however, Article 138 of the Public Accounting Law considers this institution to be a government company in terms of the inclusion of the Accounting Law.

objections regarding the division of executive agencies into four categories: ministries, government institutions, non-governmental public institutions, and government companies, whose vague and imprecise definitions are provided in laws based solely on budget and capital, and this single division is the criterion for consideration in all matters, including administrative, employment, financial, transactional, judicial, supervisory, etc., given the lack of a more desirable classification in existing laws and regulations and the failure to implement a diverse and evolving system that provides types of executive agencies based on the subject, we are forced to place the Central Bank under one of the aforementioned four headings. Given that in the Central Bank Law, many provisions governing the Central Bank, such as financial, transactional, employment, administrative, etc., have been specifically assigned, and we can claim that the Central Bank has its own legal system that does not fall under any category, considering the repeal of the Monetary and Banking Law provision regarding "the non-inclusion of general laws and regulations on the Central Bank except in cases of specifying the name" in the new law, as well as the enactment of recent general laws that mention the general title of all executive bodies, and therefore the generality of its provision will also include the Central Bank, it is necessary to determine the nature of the Central Bank in order to know where this institution stands in all general laws and regulations and which legal system will govern it; in addition, determining this situation is also very important in terms of judicial supervision and the competent authority.

2.2 The Position of entities Requiring Mention or Clarification of Their Names Among Public Law Entities

The phrase “entities who, according to their specific laws and regulations, the inclusion of laws regarding them is subject to the mention of their names” was first mentioned in Article 27 of the National Budget Program Law approved in 1972. In principle, the approvals of the parliament and public regulations, from the perspective of the covered institutions, include all public law entities; however, among the laws and regulations before and after the revolution, some instances that we call entities requiring mention or clarification of their names[1] have been excluded from the inclusion of public laws and regulations (Barzegar-Khosravi & Fallahzadeh, 2021).

[1] Entities requiring mention or clarification of name have some differences: From the perspective of the scope of general laws to them, there is this difference: regarding “entities

According to Article 29 of the 1960 Banking and Monetary Law, since its establishment, the Central Bank of Iran has not been subject to general laws and regulations related to the government and enterprises established with government capital, unless the Central Bank of Iran is explicitly mentioned in the relevant law. This provision has also been repeated in Clause “D” of Article 10 of the 1972 Monetary and Banking Law so that the Central Bank’s decisions in the field of monetary and banking policies are not subject to the political affairs of the country and are based on specialized matters, not political pressures (Elsan & Negintaji, 2022). Independence in the decision-making and performance of the Central Bank is so important that it is considered one of the main tools of a healthy economy; because reducing the degree of independence of the Central Bank will have many negative consequences for a country; for example, there is a significant relationship between the independence of the Central Bank and the average inflation rate, production fluctuations, and the stability of economic growth. This means that reducing the independence of the Central Bank will lead to a decrease in economic growth and an increase in the inflation rate (Zarrin-Eghbal et al., 2018). In addition, the exclusion of the Central Bank from the scope of general laws and regulations is due to the necessity of protecting the assets of the Central Bank in international lawsuits against Iran (Barzegar-Khosravi and Fallahzadeh, 2021); for example, in the jurisdictional decision of the

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requiring mention of name”, it is sufficient to state the phrase “this law includes persons to whom the scope of the law requires mentioning of name”, but regarding “persons requiring clarification of name”, it is not sufficient to state the phrase clarification and it is necessary to explicitly mention the title of that institution in the law in order to include the provision of the law for that person in that specific case. The Islamic Republic of Iran Broadcasting the National Oil Company are examples of “names requiring clarification of name”. The Central Bank is also an example of the scope of laws to which “names requiring clarification of name” is “names requiring clarification”. Before the revolution, the separation of these two concepts was considered in laws and regulations, but in the legislative and judicial practice after the revolution, in many cases this separation between the two categories has not been taken into account and, with the attitude of not distinguishing between the two, in some cases the two have replaced each other or, assuming a logical relationship of equality between them, only one term or together with each other and with examples of the institutions "requiring mention" or "clarification of name" have been used (see: Aghaei-Togh & Mousavi (2020); Barzegar-Khosravi & Fallahzadeh (2021)). Some authors also claim that the names of all the companies "requiring mention" and "clarification of name" are included in the appendix to the approval letter No. 1986/3/1-91148 of the Council of Ministers without distinguishing between "mention" and "clarification", and consider the separation between these two categories to be merely a solution for some companies to evade the implementation of the laws Mennati-Nejad, 2006).

International Court of Justice regarding the claims of “some of Iran’s assets” dated February 13, 2019, special attention has been paid to the nature of the Central Bank and its independence from the government, and by accepting independence, it has not assumed that financial claims against the government are financial claims against the Central Bank (Mousavi-Mirkalaei, 2021).[1]

Entities which “require mention” or “specify name” despite being exempt from general laws and regulations, are a type of public law entities [2]. Now the question arises as to which category of public law entities do entities who “require mention” fall into: ministry, government institution, government company or non-governmental public institution?

In response to this question, we must say that entities who “require mention” or “specify name” can fall into any of the three categories of government institution, government company or non-governmental public institution; however, due to the specific characteristics of that institution, they will not be subject to the generalities of the laws and regulations regarding that type of public law entities and, except in cases where the inclusion of general laws or regulations is specified, they will be subject to their own laws and regulations; For example, the Atomic Energy Organization is a

[1] In these claims, the Central Bank of the Islamic Republic of Iran has relied on its independent legal personality as a government company and has not considered its assets to be the property of the Iranian government. The International Court of Justice states in its reasoning: first, according to the Treaty of Amity, an institution can only be considered a company if its legal personality has been granted to it by the legal system of the State in which it is established; second, an institution that is wholly or partly owned by the State can be considered a company under the Treaty of Amity. The Court concludes that an institution that only carries out governmental activities and does not engage in activities of a commercial nature cannot be considered a company within the meaning of the Treaty that has carried out commercial activities and is in a competitive market. Therefore, the Court considers it necessary to examine the nature of the activities of the Central Bank in the United States. Since those activities were of a substantive nature and related to the nature of the case, the Court states that it is possible to issue a ruling on the legal personality of the Central Bank and its status as a state corporation at the substantive stage. On the other hand, the Court states that if it is a corporation, the immunity of the Central Bank cannot be raised. In Iran’s argument, the independent legal personality of the Central Bank and its immunity are cumulative; because despite being established as an independent corporation, the Central Bank performs a governmental and sovereign function. Therefore, it also enjoys the immunities of the State. Despite the non-acceptance of the Central Bank as a state corporation based on the Treaty, at the substantive stage, the Court, by accepting the legal personality of the Central Bank of Iran independent of the State, rules on the United States’ violation of the Treaty of Amity in this regard.

[2] For more information, see: Definition of Executive Branch in Article 5 of the Civil Service Management Law.

government institution, but it is a “person requiring disclosure” in order to avoid certain regulations, such as the payment procedures stipulated in the General Accounting Law, which involves seven difficult and time-consuming stages of payment from the treasury[1]. Higher education and research institutions are also examples of government institutions with special laws, according to Article 1 of the Permanent Provisions of the National Development Programs Law, which requires “disclosure of names” for the inclusion of general laws on them.

The word “entities” suggests the title “government companies requiring mention” or “name clarification.”[2] However, the abundance of examples does not mean that it is exclusive to this category of public law entities. In addition to the nature of some examples, the provisions of some laws and regulations also support this view; for example, Article 4, Paragraph 3 of the Law on the Establishment of the Crisis Management Organization approved in 2008[3] states in its powers that the Supreme Council for Crisis Management: “Legal action to approve the precise duties and roles of ministries and government organizations, non-governmental public institutions, Islamic councils, municipalities, organizations, and companies whose inclusion in the law requires mentioning their names.” Mentioning the names and duties of organizations and companies whose scope of the law requires mentioning the names in this clause without mentioning government companies in that title, and also, the expression of the word "organizations" with the suffix "waw" next to "companies" in the above legal phrase, indicates the existence of entities requiring mentioning or specifying the name other than government companies. The classification of public law entities in which the Central Bank falls is a matter that we will discuss below.

3 Examining the Characteristics of the Central Bank Among Public Law Entities

Considering the types of public law entities and considering that we stated that entities "requiring mention" or "name clarification" are also among the public law entities, and considering the abrogation of the provisions regarding the non-inclusion of general laws and regulations on the Central Bank, except in

[1] For example, the Atomic Energy Organization is a government institution, but it is listed as a “named requirement” to avoid certain regulations, such as the payment procedures stipulated in the Public Accounts Law, which include seven difficult and time-consuming stages of payment from the treasury (Rostami, 2016).
[2] For more information, see: Aghaei-Togh & Mousavi, 2020; Mennati-Nejad, 2006.
[3] This law was repealed with the approval of the National Crisis Management Law of 2019.

cases of "name clarification" pursuant to the Central Bank Law approved in 2023, the issue now arises as to which types of public law entities does the Central Bank have the characteristics of, and considering the ambiguity of the personality of this institution, which types of provisions of public law entities can be applied to it.

In this section, based on the characteristics stated regarding the types of public law entities, including government institutions, government companies, ministries, and non-governmental public institutions, and of course with a critical look at the laws and judicial practice, we will examine the relationship between the aforementioned institutions and the Central Bank. It is worth noting that, given the specific nature of the ministry[1] and the necessity of having the title of ministry and its tenure by the minister with specific political appointment procedures based on the provisions of the constitution and the Central Bank's departure from its regulations, examining the compliance of the Central Bank with the ministry is practically a departure from the subject. Therefore, in the following, we will examine the other three categories, namely government institution, government company, and non-governmental public institution, from the perspective of the compliance of the nature of the central bank with each of the above characteristics, and only in cases of necessity, we will state the characteristics of the ministry:

3.1 Establishment and Dissolution

Unlike private legal entities that require registration for establishment, according to Article 578 of the Commercial Code, public law entities have legal personality as soon as they are established and without the need for registration. This is known as a common feature among all instances of public law legal entities that are established according to law and do not require registration. Of course, in some cases, the origin of these entities was private individuals, but by nationalizing them, the government changed their legal personality and turned them into public law entities (Saffar, 1994). As in Article 4 of the Public Accounting Law, one of the forms of government companies is companies that are nationalized or confiscated by law or a competent court and are known as such.

Given the broad interpretation of the law and the existence of some quasi-legislative institutions in the country, Article 3 of the Civil Services

[1] Article 2 of the Public Accounts Law: "A ministry is a specific organizational unit that is or will be recognized as such by law." Article 1 of the Civil Service Management Law: "A ministry is a specific organizational unit that is responsible for achieving one or more of the government's goals and is or will be established by law and is managed by the minister."

Management Law (definition of non-governmental public institutions) and Note 1 of Article 4 of this law (definition and characteristics of government companies) have limited the establishment of these institutions to the formation of a law with the approval of the Islamic Consultative Assembly. Given the difference in the way in which non-governmental companies and public institutions are established in the definitions provided in the Civil Services Management and Public Accounting Laws, the question raised is the relationship between these two definitions and the criteria to be considered in the establishment of these types of institutions; is only the Islamic Consultative Assembly considered the competent institution for the establishment or does the law in a general sense support the possibility of establishing these types of institutions by quasi-legislative institutions? In response to this question, some believe that given the later date of the Civil Services Management Law compared to the Public Accounting Law, the definitions provided in the Management Law supersede the definitions in the Public Accounting Law.[1] Some other jurists believe that[2], given the specificity of the Public Accounting Law and its rule in the field of financial and transactional affairs, the definitions mentioned in the Public Accounting Law prevail in financial and transactional affairs, and the Management Law and its definitions are considered the standard of practice in the procedure of general definitions in the administrative field (Ahangar-Samakoush & Afshari, 2020). The third opinion, in combining the two articles, by explaining the definitions of non-governmental public institutions in the two laws, considers Article 3 of the Management Law to contain substantive criteria and the note to Article 5 of the Public Accounting Law regarding the “mention” of the aforementioned list of institutions to be a formal criterion for defining this

[1] Advisory Opinion of the General Legal Department of the Judiciary in 2013: Considering that the “Civil Services Management Law” passed in 2007 supersedes previous laws, including the Public Accounts Law of 1987, and is equivalent to Article 127 of the Civil Services Management Law, all general and specific laws and regulations contrary to this law have been repealed from the date of its entry into force. Therefore, institutions that are subject to the definition contained in Article 3 of this law, even if they are not included in the List of Non-Governmental Public Institutions and Institutions Law passed in 1994, will be considered non-governmental public institutions or institutions, because the List of Non-Governmental Public Institutions and Institutions Law was approved based on Note to Article 5 of the Public Accounts Law, which, with the new definition provided in Article 3 of the Civil Services Management Law, basically eliminates the need to approve the list.

[2] This view is also supported by consultative opinions provided to the author by Dr. Rostami, Dr. Najafikhah, and Dr. Fallahzadeh through personal communications.

type of institution. Therefore, despite considering the approval of the Parliament to be necessary for the establishment of non-governmental public institutions, this group believes that the inclusion of the names of institutions in the List Law is still mandatory (Hodavand, 2019).

The Central Bank, in terms of establishment, like public law entities, was established under the Monetary and Banking Law of 1960[1] and continued to exist with the approval of the Monetary and Banking Law in 1972 and then the Central Bank of the Islamic Republic of Iran Law of 2024 approved by the legislator. In addition, its dissolution will also be in accordance with the law and depending on the decision of the public authority.[2] Given the commonality of this criterion in all public law entities, the definitions mentioned regarding the government institution and the ministry in terms of establishment under the law do not provide a precise criterion for identifying the Central Bank under these headings.

Table 1
Status of public law entities from the perspective of establishment and dissolution

types of public law entities	Status of individuals from the perspective of establishment and dissolution	Central Bank Status
Government Institution	by right	●
Government Company	by right	●
Non-Governmental Public Institution	by right	●

Source: Research Findings

3.2 The Purpose of Providing Public Service

In the definitions provided for a government institution, the only reliable criterion is the performance by the government institution of some of the duties and affairs that are the responsibility of one of the three branches of

[1] The country's monetary and banking bill was submitted to the National Assembly on December 2, 1959, and was approved by the joint committees of Finance and Justice, the Senate, and the National Assembly on May 28, 1960. It was notified to the government for a five-year trial period, and on August 9, 1960, the Central Bank officially began operating.
[2] Clause "H" of Article 10 of the Monetary and Banking Law, Clause "T" of Article 55 of the Central Bank Law.

government and other legal authorities.[1] From this statement, the purpose and competence of government institutions can be deduced; because the main purpose of the government in administering society is to provide public services to citizens and ensure the general interest of society and all segments, without restrictions, which is the responsibility of the public sector,[2] and this is the purpose of establishing every ministry and government institution. Given the existence of the stated goal in carrying out the competencies and duties and the principle of the priority of public services, the institutions formed with this goal enjoy the privileges of public power in carrying out their duties, which are necessary for the implementation and performance of their duties to protect public interests and interests and provide public service (Bilouseac, 2012; Zarei & Najjarzadeh-Henjani, 2017; Rezaeizadeh & Kazemi, 2012; Mohammadnejad, 2016; Vaezi & Alborzi, 2017).

In addition to ministries and government institutions whose ultimate goal is to provide public services, among other public law entities, non-governmental public institutions are also responsible for duties and services that have a public aspect[3], and private interest is not the priority of their formation and competence, despite the fact that most of their financial resources are provided from non-governmental budgets.

Unlike the three categories above, according to the stipulation of the Civil Service Management Law regarding government companies within the scope of public law entities, the main purpose of their formation is not to provide public services[4], but rather to carry out part of the government's tasks, and the main aspect that distinguishes this type of public law entity from other instances is this dimension. In fact, from this perspective, government companies are similar to private commercial entities (Yousefzadeh, 2010).

[1] See: Article 3 of the Public Accounting Law, approved in 1987; Article 2 of the Civil Service Management Law, approved in 2007.

[2] Public services are a concept that not only constitutes the purpose and existential philosophy of government organizations, but also presents private providers of these services as subjects of public law; Molaei & Bande-Ali (2020).

[3] Article 5 of the Public Accounting Law; Article 3 of the Civil Service Management Law.

[4] "Government Company: An economic enterprise that is established by law to carry out part of the government's tasks in accordance with the general policies of Article 44 of the Constitution, a proclamation by the Supreme Leader, and is considered one of the duties of the government, and more than fifty percent of its capital and shares belong to the government. Any commercial company that is established through investment by ministries, government institutions, and government companies, individually or jointly, is a government company as long as more than fifty percent of its shares belong individually or jointly to the aforementioned organizational units."

Some researchers, contrary to the stipulation of the management law, consider government companies to have a dual role of earning profit and providing public service, and the quasi- government company aspect with commercial company is only in theory (Barari, 2019). The reason for these people is, in addition to the lack of stipulation of the accounting law on the functioning of government companies, the existence of examples of government companies in the outside world with sovereign functions and enjoying the privileges of public power (Mennati-Nejad, 2006). Given that some of them are practically not profitable, private individuals are not interested in economic activity in that sector; such as health insurance services, electricity and water distribution; some of these companies are also not looking to earn profit (Gholizadeh, 2011) and from the perspective of the rulings governing them, they are considered government companies by law, such as the Iranian Broadcasting Corporation.[1]

It seems that in terms of the purpose of government companies and their scope of activity, we should divide the issue into two time periods: before the announcement of the general policies of Article 44 of the Constitution in 2005 and after. After the implementation of the general policies of Article 44, the enactment of the Management Law, and then the enactment of the Law to Implement the General Policies of Article 44, the duty of government companies must necessarily be limited to entrepreneurial affairs. In addition to the definition of a government company in the Management Law, Article 13 of the General Policy Implementation Law, Article 44 of the Constitution, by affirming the impossibility of conducting governance affairs by government companies, stipulates that in order to organize and optimally utilize government companies and increase the efficiency and optimal management of companies that remain in the public sector, all matters related to policy-making and the exercise of governance duties, in accordance with the procedure specified in paragraph "A" of this Article, shall be separated from government companies and assigned to the relevant specialized government ministries and institutions. Therefore, with the enactment of the above-mentioned resolutions, the special powers of public power should be taken away from government companies and they should only engage in profit-making activities like private commercial entities.

The central bank, from the perspective of its purpose, is similar to public law entities, because, based on its founding law, the purpose of forming this institution is to perform some of the public services. Maintaining the

[1] Article 138 of the Public Accounting Law.

government's account, implementing foreign exchange and monetary policy, supervising the work of banks, issuing banknotes, preserving the value of money, and maintaining the country's gold and currency reserves are among the most important duties of the central bank. In fact, the goal of the central bank is to provide the conditions for the country's economic progress by regulating and implementing monetary and credit policies[1] and to support the government in implementing various programs, including economic stabilization and development programs. Therefore, we can say that the central bank has no goal other than protecting the interests of the national economy (Elsan & Bahrami, 2024).[2] In order to fulfill the duty of monetary and foreign exchange regulation, some actions of the central bank lead to earning income, but these actions are in line with the task assigned by the law to maintain public order in the relevant markets and to enable the central bank to take the pulse of the market and are not considered the main goal of the central bank.

In view of the above, we must say that the Central Bank differs from government companies and similar government institutions and non-governmental public institutions in terms of its purpose, and from this perspective, it also benefits from the privileges of public power. It is true that in some cases, due to the requirements of its purpose, which is to regulate monetary policies, it is forced to carry out economic activities, but the purpose of these activities is not to gain profit, but rather to fulfill the duty of public service and monetary regulation in the country.

Table 2
The status of public law entities from the perspective of purpose

types of public law entities	Status of individuals from the perspective of purpose	Central Bank Status
Government Institution	Public Service Provision	●
Government Company	Gaining Benefit	○
Non-Governmental Public Institution	Public Service Provision	●

Source: Research Findings

3.3 Administrative Affairs

From the perspective of administration, private legal entities are subject to the rules of private law and are governed with administrative and organizational independence from the state, without hierarchical supervision[3] and by the

[1] Article 10 of the Monetary and Banking Law.
[2].See: Articles 11-14 of the Monetary and Banking Law; Articles 2-4 of the Central Bank Law.
[3] Of course, the government monitors them in various ways.

election of members. The appointment and dismissal of high-ranking officials of these institutions is usually carried out by their members and general assemblies. On the other hand, public law entities are subject to the administrative system, administrative supervision, and the rules of public law, and their high-ranking officials are also often appointed; of course, this ruling is not completely applicable and true for the three categories of public law legal entities.

Among public law entities, ministries and government institutions are completely dependent on the government in the administrative sphere and are subject to general administrative laws (except for specific cases). The appointment and dismissal of the highest officials in government institutions is carried out by the central government and without the initiative of the members. Also, hierarchical supervision based on the subordination of subordinates to superiors and complete supervision of superiors over subordinates is applied to these institutions (Emami & Ostovar-Sangari, 2011). Among government institutions, government higher education and research institutions are different from an administrative perspective. Although the heads of government higher education institutions are also appointed and their dismissal and appointment are carried out by the government, from an administrative perspective, according to special laws, including Article 1 of the Law on Permanent Provisions of National Development Programs, they are subject to special regulations issued by their Board of Trustees and are not subject to general administrative and employment laws, as well as financial and transactional laws; However, given the authority to appoint and dismiss high-ranking officials of these institutions, the presence of the minister[1] in the composition of the board of trustees, and the minister's proposal of board members, in practice, the aforementioned institutions usually limit their discretionary authority and regulate their administrative regulations in accordance with the model regulations of the higher-level ministries.

Regarding non-governmental public institutions, given the main purpose of these institutions, which is to provide technical and specialized public services independent of the government in the form of a technical decentralization system[2], they should not be subject to central appointment

[1] Law on the Formation of Boards of Trustees of Universities and Higher Education and Research Institutions, approved in 1988 by the Supreme Council of the Cultural Revolution.

[2] In terms of technical and specialized matters, some specialized institutions, known as public institutions, are granted legal personality and decision-making authority and provide public

and dismissal in terms of administration and organization (Hosseini-Pour Ardakani, 2010) and should not be dependent on the three branches of government and should have an independent organization (Yazerlou, 2000). Also, the dismissal and appointment of high officials of these institutions is not carried out by the government and the three branches of government and should be under limited and exceptional supervision[1] of the central government in the form of trusteeship supervision.[2] However, in reality, these institutions are divided into three categories from an administrative perspective: some are completely independent of the government; a group, while being relatively independent of the government, relies on the government in carrying out their missions; and the third group is largely under the control of the government and its officials are dismissed and appointed by the government (Abbasi & Akbari, 2016). For example, the head of the Martyrs and Veterans Affairs Foundation, which is a non-governmental public institution, is appointed by presidential decree, upon the proposal of the President and the approval of the Supreme Leader[3], and is recognized as the Vice President. In the Social Security Organization, the dismissal and

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services under the supervision of the government (Aboulhamd, 1991; Mousavi-Zadeh, 2009; Tabatabaei-Motameni, 2008).

[1] The exercise of exceptional and limited legal authority by the highest authorities of the central government over public law legal entities based on decentralization in order to ensure that the provisions and their implementation do not conflict with the public interests of the country (Tabatabaei-Motameni, 2008).

[2] Administrative guardianship is a set of exceptional and limited legal powers that the highest authorities of the central government exercise over legal entities of public law based on decentralization in order to prevent their provisions and actions from contradicting the public interest (Ansari, 1998). Due to the existence of this power, with the aim of ensuring the implementation of laws and regulations and creating unity in the implementation of public administration, the central government exercises supervision over decentralized units (Tabatabaei-Motameni, 2008).

There are several characteristics of guardianship supervision: First, the aforementioned supervision arises from a specific law and its limits and boundaries are clearly specified by the legislator and the principle is that it does not exist; except in cases and within the limits specified by the law in order to achieve the goal of ensuring that the decentralized unit does not escape legal jurisdiction; Second, guardianship supervision is exercised by a public law legal entity over another public law legal entity, one of which has general jurisdiction in the management of affairs and the other has limited jurisdiction. The third feature is that if the supervisory authority exceeds the limits of its jurisdiction, the decentralized entity has the right to refer to judicial authorities or an administrative court to invalidate the decision of the supervisory authority (Hosseini-Pour Ardakani, 2010).

[3] Article 12 of the Statute of the Martyr and Veterans Affairs Foundation, 1998.

appointment of the CEO is carried out by the organization’s council, which is entirely composed of high-ranking government officials, including the President and several deputies and ministers.[1] Meanwhile, some institutions, such as the Mostazafan Foundation, have greater operational independence from a structural and administrative perspective, and despite the issuance of orders by the members of the board of trustees and the head of the foundation by the Leader and his supervision of actions and measures[2], the decision-making is the responsibility of the organization’s board of trustees.

The third category is government companies whose organizational structure is in accordance with the organizational plan of commercial laws and which carry out their actions in accordance with the approval of their general assemblies and boards of directors. The general assembly is responsible for making fundamental decisions in the company, such as changing the company's capital, electing the company's managers and inspectors, approving the articles of association, etc. The appointment and dismissal of CEOs in government companies, like other commercial companies, is carried out by the approval of the assemblies and by the board of directors. However, since the state capital in these companies is greater and a large number of management positions are held by representatives of government institutions, the government actually plays a significant role in the appointment and dismissal of its managers. As a result, the company's policies and actions will be subject to government policies and its changes and developments (Barari, 2019), because central government officials, if they are not satisfied with the performance of company officials, take action to change the members of the board of directors and the CEO, and in this way dictate their policies to the company. In some cases, contrary to the corporate structure of these institutions, the need for final approval of managers by central authorities has been stipulated. [3][4]

[1] Articles 6 and 13 of the Social Security Organization's Statute, approved in 2008.
[2] Articles 10 and 12 of the Statute of the Foundation of the Oppressed of the Islamic Revolution.
[3] To see the example, see the Law amending Article (113) of the Civil Service Management Law and the method of determining the management of the Social Security Organization and pension funds and health insurance.
[4] Considering the above, in practically all types of public law entities, we witness government interference in appointments and dismissals, and as a result, an impact on administrative and management affairs, which results in the organizational dependence of these institutions on the government, lack of independence in decision-making, political dependence on the government and changes commensurate with changes in managers and political officials, recommend ability

From a structural perspective, the Central Bank includes the General Assembly, the Supreme Board, the Executive Board, the Supervisory Board[1], and the Fiqh Council[2]. The structure of the Central Bank and its constituent bodies and the powers assigned to them in making decisions are similar to those of government companies. The existence of the General Assembly and the Supreme Board as the legislative body, the Executive Board as the executive body, and the General Assembly, the Supervisory Board, and the Fiqh Council as the supervisory body in the Central Bank has made the Central Bank similar to commercial companies and government companies in terms of structure. Of course, the separation of these bodies is not complete like that of companies, because some individuals are present in different legislative and supervisory bodies at the same time; for example, the Minister of Economic Affairs and Finance is both a member of the General Assembly as a supervisory body and a member of the Supreme Board as a legislative body, and is also involved in the selection of the Supervisory Board, which has supervisory status.

In terms of dismissal and appointment of high officials, the Central Bank also has members appointed by the government.[3] The frequent changes in the Bank's structure in accordance with the laws of the Development and Reform Program and the merger of some of its officials[4] have not led to changes in the government-appointed members of the Central Bank, but their number has changed. Although Article 19 of the Monetary and Banking Law of 1972 required the approval of the General Assembly of Banks in the appointment of the Governor of the Central Bank[5], which made the Central Bank similar to

and increased rent, the influence of political affairs on appointments, and lack of attention to the meritocracy pillar, and the inefficiency of these institutions.

[1] The Supervisory Board consists of: three auditor members from among the experienced auditors knowledgeable in banking matters with at least ten years of relevant work experience, and two members who are banking economists who are elected for a two-year term upon the proposal of the Minister of Economic Affairs and Finance and the approval of the Central Bank's General Assembly.

[2] Article 5 of the Law of the Central Bank of the Islamic Republic of Iran, approved in 2023.

[3] Article 18 of the Monetary and Banking Law; Articles 5-7 of the Central Bank Law of the Islamic Republic of Iran.

[4] Article 19 of the Law on Permanent Provisions of National Development Plans; Article 15 of the Law on the Sixth Development Plan; Articles 88, 89, 90 and 95 of the Law on the Fifth Development Plan; Clause "D" of Article 10 of the Law on the Fourth Development Plan.

[5] Before the Islamic Revolution, the appointment of the Governor of the Central Bank was carried out in Article 38 of the 1960 Law and Article 19 of the 1972 Law, upon the proposal of the Minister of Economic Affairs and Finance, with the approval of the Council of Ministers,

government companies, according to the approval of the Central Bank's Management Procedures by the Expediency Council, dated November 15, 2014 the Governor is appointed upon the proposal of the Minister of Economic Affairs and Finance, the approval of the Cabinet, and the approval and decree of the President. His dismissal is also carried out through a similar process. Therefore, we must say that according to the recent laws, the Central Bank does not have complete structural independence from an administrative perspective and is dependent on the government from the perspective of structure and dismissal and appointment of high officials, and supervision is practically exercised through changes in management. Some jurists even consider the mention of phrases such as providing advice by the Central Bank to the government and parliament and similar requirements foreseen in the new law to be contrary to the administrative independence of the bank[1] and require supervision beyond the aforementioned, that is, hierarchical (Elsan & Negintaji, 2022).

According to the above, we must say that although in the governance structure of most countries, the central bank is independent of the overall governance structure and this has now become an accepted principle, in our

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and pursuant to the Shah's decree. In the 1972 reforms, the approval of the General Assembly of Banks was added before the phrase "approval of the Council of Ministers." In the post-revolutionary reforms, with the removal of the position of the King, the phrase was changed, and after the approval of the Council of Ministers, the Minister of Economic Affairs and Finance was entrusted with issuing the Governor General's notification. In 2014, in the latest changes related to the appointment of the Governor General, the appointment process was subject to the proposal of the Minister of Economic Affairs and Finance, the approval of the Council of Ministers, and the President's approval and notification. The appointment procedure in the Central Bank Law also confirms the 2014 approval of the Advisory Council on the Central Bank's management procedure. In this process, the manner in which the appointment of the Central Bank Governor has changed and become a matter of state control, and the need to obtain approval from each member of the Cabinet and the President, as political officials of the country, clearly shows that, with the aforementioned characteristics, the independence of the Central Bank has been sacrificed to the coordination of the Central Bank with the government.

[1] Government interference in the appointment of the Governor General, the possibility of dismissal without providing logical reasons and despite legal conditions for political reasons, disregard for the Governor General's previous positions in the government in order to prevent conflicts of interest, the composition of the members of the Supreme Board and government interference in their selection, political affiliation of the members of the Supreme Board, etc. are examples that undermine the administrative independence of the Central Bank. The lack of administrative independence and the Governor General's influence on the political situation of the country, consequently, overshadows the Central Bank's financial policies, and sometimes political rather than specialized policies.

country, the central bank, lacking administrative independence, is subject to the government's financial policies and budgeting system and operates like a vice president. It is worth noting that, as we mentioned earlier, this damage also exists for higher education institutions, some non-governmental public institutions, and also companies established with government capital, and the government, by interfering in dismissals and appointments, practically undermines the independence of these institutions. Therefore, from this perspective, we must say that structurally, the central bank is similar to government companies and has a three-tier structure of a small domestic government, and in principle, the aforementioned organs should also have independence in making decisions; However, like some non-governmental public institutions, government supervision of the Central Bank, apart from enactment of laws and regulations containing provisions affecting the independence of the Central Bank, is exercised by the appointment and dismissal of the Governor of the Central Bank by political authorities, and in practice the independence of these institutions will be affected by this.

Table 3

The status of individuals from the perspective of administrative affairs

Types of Public Law Entities	Status of individuals from the perspective of administrative affairs	Central Bank Status
Government Institution	Structure and supervision: subordinate to the government	○
	Removal and appointment: subordinate to the government	●
Government Company	Structure and supervision: similar to commercial companies	●
	Removal and appointment: through the assembly, but under the influence of the government	○
Non-Governmental Public Institution	Structure and supervision: trusteeship; supervision through removal and appointment in some institutions	○
	Removal and appointment: wide range	●

Source: Research Findings

3.4 Employment Affairs

Private law entities are subject to labor law in terms of employment matters. The competent authority for their employment claims is also the quasi-judicial authorities foreseen in the labor law, such as the Labor and Employer Dispute

Resolution Board[1]. On the other hand, the employment rules of public law entities are very diverse; in such a way that even among ministries and government institutions, there is no single law that governs. The general law governing government employees is the Civil Employment Law and the Civil Service Management Law, but it contains many exceptions among the four categories of public law entities, including ministries, government institutions, government companies, and non-governmental public institutions. According to Article 117 of the Civil Service Management Law, "All executive bodies, with the exception of institutions, institutions, formations, and organizations that are managed under the direct supervision of the Supreme Leader, the Ministry of Intelligence, non-governmental public institution that comply with the definition mentioned in Article 3, members of the academic board and judges, advisory boards of the Court of Accounts, the Guardian Council, the Expediency Discernment Council, and the Assembly of Experts of the Leader are subject to the provisions of this law, and with regard to the military and law enforcement forces, the Supreme Leader's opinion shall be followed." According to this article and at the outset, non-governmental public institutions are subject to their own specific regulations or the labor law in accordance with the provisions foreseen in their founding law or statute. Of course, based on judicial practice, there are also contradictory instances[2]. In addition to non-governmental public institutions, from the institutional perspective of the Ministry of Intelligence, some government institutions, including the Guardian Council, the Expediency Council, the Assembly of Experts[3], higher education institutions, and universities[4], as well as institutions and organizations under the leadership of the Leader, some of which operate as non-governmental public institutions, such as the Imam Khomeini Relief Committee (RA), the Martyr and Veterans Affairs Foundation, and some that operate outside the scope of these institutions, such as the Iranian Radio and Television, the Supreme Council for the Cultural Revolution, and the Executive Headquarters of the Decree of Imam Khomeini (RA), are excluded from the scope of the general employment law and are subject to their own employment laws and regulations. In addition to the aforementioned

[1] Article 157 of the Labor Code.
[2] According to decision number 874 dated 2020/10/28, of the General Board of the Court of Administrative Justice, the employment affairs of the country's municipalities, except for the Tehran Municipality, are subject to the National Employment Law.
[3] Article 117 of the Civil Service Management Law.
[4] Article 1 of the Law on Permanent Provisions of National Development Programs.

institutions, some officials and positions are also excluded from the scope of the Management Law pursuant to the aforementioned article or other laws and regulations. A detailed discussion of this issue is beyond the scope of the present paper. However, as a few illustrative examples, political employees of the Ministry of Foreign Affairs[1], academics, and judges may be mentioned.

A notable point regarding the scope of the Management Law and its exceptions is the lack of mention of the name of government companies among the exceptions of this law. Despite the exclusion of government companies from the scope of the National Employment Law pursuant to Clause "P" of Article 2 of this law and the establishment of employment regulations for government companies subject to Clause "P" of Article 2 of the National Employment Law approved by the Parliamentary Employment Commission in 1973 for them, in Article 117 of the Civil Service Management Law, the title of government companies is not mentioned in the examples of exceptions to this law and, based on the necessity of following general laws, these companies, except for cases with special laws and regulations such as banks, are considered subject to the Management Law from an employment perspective. Judicial practice also confirms this ruling of the legislator in some instances[2]. Although this inclusion is questionable from the perspective of the goals and functions of government companies and their lack of special privileges of power, given the breadth of the exceptions stated in Article 117 of the Management Law, it seems that the failure to mention government

[1] Note 4, Article 117 of the Civil Service Management Law.

[2] Decision No. 928 of the General Board of the Administrative Court of Justice dated 2017/12/12, annulling some clauses of the regulation on administrative and employment systems for employees of the oil industry, which had extended the administrative and employment system for employees of operational and specialized units mentioned in Article 10 of the Law on Duties and Authorities of the Ministry of Oil to all employees; also, see the Administrative Court of Justice's letter No. 1559 dated 2018/10/2, which states in part: “According to Article 5 of the Civil Service Management Law, the payment of salaries and benefits to employees of government companies, including the aforementioned company, has been subject to the aforementioned law since the entry into force of the Civil Service Management Law, and the third chapter of the contested regulation is considered a violation of laws and regulations due to its contradiction with Chapter 10 of the Civil Service Management Law, based on Article 127 of the aforementioned law, and its implementation until the amendment is considered a violation of laws and regulations.”

Also, see the opinion of the Legal Office of the President regarding the employment regulations of the Small Industries Investment Guarantee Fund dated 2008/12/28, in which it also considers the approval of the Management Law and the lack of mention of government companies in Article 117 to imply the inclusion of the Management Law on government companies, and does not consider the approval of a specific employment regulation that is contrary to this law to be permissible.

companies among them was intentional and that the legislator intended to subject these companies to general laws due to their benefit from public capital. Of course, some specific examples of government companies have been excluded from the scope of general laws.

Regardless of the law governing employment, if we want to state the competent authority for handling employment complaints and lawsuits among various types of public law entities, we must say that in terms of employment complaints, according to Article 10, Paragraph 3 of the Administrative Court of Justice Law, the Administrative Court of Justice has the jurisdiction to handle complaints of judges and those subject to the Civil Service Management Law and other employees of the units and institutions mentioned in Paragraph 1 (including ministries, organizations, government institutions and companies, municipalities, the Social Security Organization, and revolutionary organizations and institutions and their affiliated institutions) and employees of institutions to which the application of this law requires "mention of name", both military and civil, in terms of violation of employment rights. According to the aforementioned clarification, complaints from employees of all government institutions, ministries, government companies, examples of non-governmental public institutions mentioned or under the heading of revolutionary institutions, and other revolutionary institutions outside the category of non-governmental public institutions, as well as all institutions subject to mention or clarification of names, are heard in the branches of the Administrative Justice Court. This is despite the fact that these institutions may be subject to different employment laws and regulations, and the diversity in their employment laws does not prevent the unification of the authority to address their employment complaints. Complaints from other non-governmental public institutions are addressed to the authorities foreseen in the special employment law and regulation or are dealt with in accordance with the labor law. Of course, in the meantime, the authority to address employment complaints of employees of some institutions such as the Islamic Azad University[1], the Assembly of Experts of

[1] Clause "H" of Article 12 of the Statute of Islamic Azad University dated 2010, October 20 Supreme Council of Cultural Revolution; unanimous votes of procedure No. 155 of the General Assembly of the Court of Administrative Justice dated May 19, 2014 and unanimous vote of the General Assembly dated February 9, 2021.

the Supreme Leader, the Guardian Council, and the Expediency Discernment Council[1] remains a matter of ambiguity.

In terms of employment matters, the Central Bank is not subject to general government employment laws and is not subject to specific employment laws and regulations of banks, such as the Banking System Regulations approved in 2000. Its employees are also not subject to the labor law, but rather, pursuant to Clause “A” of Article 18 of the Monetary and Banking Law, the Central Bank’s employment regulations are approved by the Monetary and Credit Council. Given that this clause has not been repealed from the Monetary and Banking Law pursuant to the recent law approved by the Central Bank, the aforementioned ruling in this regard remains valid and the special employment regulations approved by the Supreme Council apply to bank employees.

From the perspective of the competent authority for employment claims, the Central Bank is also subject to Article 10, Paragraph 3 of the Administrative Court of Justice Law in judicial proceedings[2]; because it is explicitly stated in Paragraph 3 of this law that employment complaints of employees of institutions for which the inclusion of this law “requires mentioning the name” are under the jurisdiction of the Administrative Court of Justice branches[3], but the issue is whether the Court branches can still enter into these claims despite the repeal of the ruling not to include general laws and regulations regarding the Central Bank according to the new law? Given

[1] These institutions, which are mentioned in the constitution, are considered government institutions according to Article 2 of the Civil Service Management Law; however, the approvals and decisions of these authorities are excluded from the scope of the article according to Note 1 of Article 12. It is not clear whether this exclusion from the scope of Article 12 also applies to employment complaints of employees of these authorities.

[2] For example, see: Order No. 140231390000882348 dated July 1, 2023, Branch 40 of the First Instance Court; Order No. 140231390000436972 dated May 14, 2023, Branch 35 of the First Instance Court.

[3] Article 10, Paragraph 3 of the Administrative Court of Justice Law: To investigate complaints of judges and those subject to the Civil Service Management Law and other employees of units and institutions mentioned in Paragraph 1 and employees of institutions to which this law applies "needs to be named", both military and civil, in terms of violation of employment rights. Article 157 of the Labor Law: Any individual dispute between an employer and a worker or trainee arising from the implementation of this law and other labor regulations, internship contracts, workshop agreements or collective labor agreements, shall be resolved in the first stage through direct reconciliation between the employer and the worker or trainee or their representatives in the Islamic Labor Council, and if there is no Islamic Labor Council in a unit, through the workers' union or the legal representative of the workers and the employer, and in the absence of reconciliation, it shall be investigated and resolved through the dispute resolution and determination boards in the following order.

the lack of explicit determination of the nature of the Central Bank in the new law, and also, given the lack of specification of the title of the Central Bank in the instances under the supervision of the Court, furthermore the repeal of the ruling of Article 10 of the Monetary and Banking Law regarding the inclusion of supervision over the employment decisions of institutions “requiring mentioning the name”, currently, from a legal and formalistic perspective, there is no specific ruling and, in principle, the Central Bank should not be subject to the supervision of the Court. Of course, judicial practice still supports the continuation of employment lawsuits filed against the Central Bank, without delving into the nature of this institution.[1]

Table 4

The status of public law entities from the perspective of employment affairs

Types of Public Law Entities	Status of individuals from the perspective of employment affairs	Central Bank Status
Government Institution	Employment law: mostly general law	○
	Complaint handling: Court of Justice	●
Government Company	Employment law: general law except for special cases	○
	Complaint handling: Court of Justice	●
Non-Governmental Public Institution	Employment law: specific law and regulations	●
	Complaint handling: some Court of Justice (mention name)	○

Source: Research Findings

3.5 Financial Affairs

One of the most important aspects of distinguishing between public and private law entities is their capital and assets. The property of private law entities is their own property, but the property of public law entities is public property (Saffar, 1994). These entities are formed with state capital and use

[1] For example, see: Order No. 140331390001556540 dated September 24, 2024 of the General Board of the Court of Administrative Justice on the subject of annulment of paragraphs 2 and 4 of Circular No. 129882/99 dated July 21, 2020; Order No. 140331390001755237 dated October 21, 2024 of the General Board of the Court on the subject of annulment of the application of the Central Bank's Resolution 97/344336 dated December 22, 2018; Order No. 140331390001567384 dated September 25, 2024of the 4th Branch of the Court on the subject of the obligation to release the securities resulting from the clearance of goods; Order No. 140331390001465134 dated September 15, 2024, Branch 36 of the Appeals Court and Order No. 140331390001636829 dated June 9, 2024, Branch 4 of the First Instance Court, regarding the allocation of foreign exchange.

the state's general budget. Also, they are subject to specific formalities in their transactions, which we will examine below:

3.5.1 Budget or Government Capital

One of the important issues in the nature of the property of public law entities is the use of state capital in creating and using the public budget to cover the cost of affairs. State institutions among these entities are formed with completely state capital and are subordinate and dependent on the annual state budget and do not have significant independent income. In addition, if they earn income, they are also obliged to deposit it into the state treasury and withdraw it from it.

According to the definitions of the Management Law and the Public Accounting Law, a government company is an institution that owns more than fifty percent of its capital and shares. Therefore, whenever more than fifty percent of a company's capital is provided by ministries, state institutions, and government companies, it will be considered a government company. The budget of government companies, which expresses the company's financial turnover and the volume of the firm's operations in the form of income and expenses (Resistance Economic Think Tank, 2020), is also as follows: after being compiled, it is approved by the General Assembly, and the Program and Budget Organization approves it, and it is reflected in the National Budget Law (Resistance Economic Think Tank, 2020). Finally, the final approval of the general budget of government companies is the responsibility of the Islamic Consultative Assembly (Economic Research Office, 2015). The income earned by each company and its profit and loss account are crystallized in its financial balance sheet and are reviewed annually by the General Assembly.[1] In addition to the income earned, credits are allocated by the government to government companies, including 1- credits for the acquisition of capital assets[2] and 2- expense credits as loss relief for some loss-making companies.[3] On the other hand, the government receives some receipts from government companies: taxes, special interest, government dividends, one percent of one-twelfth of the cost of profitable companies, etc. (Resistance Economic Think Tank, 2020).

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[1] Article 89 of the Trade Amendment Bill.

[2] It is for use in development projects and the government company is responsible for its executive management.

[3] According to Article 69 of the Public Accounting Law, government companies must cover their losses from their own internal resources through depreciation and reserves, and if this is not sufficient, they must use public revenue and public resources.

Unlike a government company, the definition of non-governmental public institutions in Article 3 of the Management Law does not mention the amount of capital, but rather the provision of more than fifty percent of the annual budget from non-governmental sources; in such a way that the total resources allocated to the institution in the public budget must be less than fifty percent of the total budget of the institution (Rostami & Hosseini-Pour, 2009). According to this definition, regardless of the initial capital that may have been provided by the government or otherwise, institutions that receive more than fifty percent of their annual budget or income from sources other than the government budget and that have the other characteristics mentioned in Article 3 can fall under the present definition (Tangestani, 2020). Therefore, the distinguishing feature of government companies from non-governmental public institution s, according to this legislative statement, is solely in their purpose. Otherwise, from this perspective, an entity formed with public capital of more than fifty percent and a public budget of less than fifty percent could fall under both the headings of non-governmental public institution, and government companies.

The capital of the Central Bank and the manner in which it is financed are set out in Article 30 of the Banking and Monetary Act of 1960, paragraph (E) of Article 10 of the Monetary and Banking Act of 1972, and Article 56 of the Central Bank Act. The initial capital of the Central Bank was financed by an amount of 3,600,000,000 rials derived from the revaluation surplus of the backing provided for under the Law of May 18, 1957. These funds were held in a special account with the National Bank of Iran and are, by their nature, considered government property. Any increase in the Central Bank's capital may be made upon the proposal of the General Assembly and with the approval of the Council of Ministers.[1] In terms of budget and income, the Central Bank, as we said, was established with the aim of providing public service, but according to the law, in order to regulate monetary and financial affairs and achieve monetary policies, it has the possibility of carrying out some economic activities as a tool for implementing policies that lead to earning profit and income. Considering the possibility of earning income for the Central Bank, unlike government companies that benefit from the public budget, which have credits included in the budget, the Central Bank has financial independence from the government's public budget. It should be added that in addition to the Central Bank's non-use of the public budget, the

[1] Clause "E" of Article 10 of the Monetary and Banking Law, 1972.

government finances its budget deficit from the Central Bank's resources in times of emergency (Mirjalili, 2004).

From the perspective of capital and budget, the Central Bank is similar in terms of capital to the examples of all three aforementioned types of entities that were formed with public capital, but from the perspective of benefiting from the country's public budget, it is similar to a part of non-governmental public institutions that do not benefit from the country's public budget. However, in the annual budget, due to the possibility of carrying out some for-profit activities, it is considered based on the commercial accounting system of government companies, and its budget is also approved by the general assembly.

3.5.2 Transactional Affairs

After examining capital and income, another issue in the field of financial affairs is the transactional affairs of public law entities. In terms of transactions, government institutions are subject to the General Accounting Law and the laws and regulations of government property transactions. In each of their transactions, they are required to comply with the conditions stipulated in the General Accounting Law, including holding auctions and tenders in their major transactions. Unlike government institutions, government companies follow the provisions of the Commercial Law in their transactions, except in cases specified by law. In other words, government companies are managed based on the commercial accounting system, but despite their compliance with the Commercial Law in transactions, bankruptcy cannot be declared against them due to the principle of continuity of public service (Tabatabaei-Motameni, 2008). Non-governmental public institutions, due to their nature, are also not subject to the General Accounting Law and the auction and tender system in their transactions (Hosseini-Pour Ardakani, 2010).

In the field of transactions, the Central Bank is not subject to the general laws and procedures stated in the Accounting Law regarding auctions and tenders, as well as other financial and transaction laws, but is subject to the Transactions Regulation that the Monetary and Credit Council[1], as the legislative body of this complex, approves. Similar to the Government Transactions Regulation, the aforementioned regulation provides for a Transactions Commission and prescribes the monetary thresholds for transactions, as well as the procedures governing auctions and tenders. The

[1] In the new law, it has been replaced by the Supreme Council.

Central Bank is required to comply with the procedures set out in this regulation when conducting its transactions[1]. Also, in the Central Bank, due to the type of duties assigned to this bank, the inability of the bank to pay the funds does not result in the declaration of bankruptcy and liquidation, and liquidation is carried out only in accordance with the law. From this perspective, the Central Bank is similar to government companies and non-governmental public institutions.

3.5.3 Financial Supervision

Another important aspect of public law entities is the exercise of financial supervision over them, which is carried out in several ways:

Method 1 - **Supervision by the Court of Accounts**: According to Article 55 of the Constitution, the Court of Accounts supervises and examines all accounts of ministries, state institutions and companies, and other agencies that use the entire country's budget in any way. The Court of Accounts' supervision over state institutions is applied absolutely with regard to all expenses incurred from the public budget. The Court of Accounts can also supervise credits granted from the state budget to state companies.

In practice, however, the Court of Accounts only reviews financial statements audited by audit authorities. In recent years, in accordance with the annual budget laws, the legislature has attempted to intensify this oversight; for example, in paragraphs "CH" and "H" of Note 3 of Article 1 of the Budget Law for the whole country for the year 2024, the manner and extent of the Court of Accounts' oversight of government companies have been specified, and in addition to overseeing financial statements, they have also been assigned duties such as submitting periodic performance reports to the Planning, Budget and Accounting Commission of the Islamic Consultative Assembly, the Planning and Budget Organization, and the Court of Accounts.

Regarding non-governmental public institutions, given the wide range of their use of the government budget, the Court of Accounts' supervision over them is different, and it seems that each should be supervised by the Court of Accounts according to the share of use of the public budget, and their income from other sources is excluded from the Court's supervision. Contrary to the aforementioned distinction, the Court of Accounts, based on the phrase mentioned in Article 55 of the Constitution, which states that it supervises the accounts of institutions that use the entire country's budget in some way, demands supervision over the entire budget of these institutions, whether the part granted from the government budget or income from other parts, under

[1] Central Bank Transactions Regulations, approved in November 2014.

Article 2 of the Court of Accounts Act of the Court of Accounts Law, but the Guardian Council explicitly considers supervision limited to cases of use of the government's public budget[1] so that no expense exceeds the approved credits.

Based on the above-mentioned cases, and considering that the Central Bank does not receive any credit from the state budget and that the credit for the bank's capital asset acquisition plans is also provided from internal resources[2], the Court of Accounts' supervision of the Central Bank is without merit, and the mention of the terms "approval" and "budget allocation" in accordance with principles 52 and 55 of the Constitution in part 4, paragraph "b" of Article 6 of the Central Bank Law is inconsistent with the Guardian Council's interpretation of Article 55 of the Constitution. However, in practice, whether before or after the enactment of the recent law, the Court of Accounts, like its supervision of non-governmental public institutions, with an extensive interpretation of its powers based on the Court of Accounts Law[3] and the provisions contained in the budget laws of recent years[4], considers all institutions that are in some way under public ownership and even public sector management to be subject to the Court of Accounts' supervision, and from this perspective, it also supervises the Central Bank.

Method 2 - **Supervision by the Accountant and the Planning and Budget Organization**: Another type of financial supervision over budget revenue and expenditure, which is common among government institutions and government companies, is the supervision of the Accountant as the person responsible for supervising, maintaining the account of government property, and ensuring financial coordination over the implementation of financial and accounting regulations (Afari & Ahmadi, 2020), who is recognized as competent for this matter based on Article 31 of the Public Accounting Law.

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[1] Guardian Council Interpretative Opinion No. 75/21/1116, dated December 4, 1996: Text of the question: ... Does Article 55 of the Constitution govern all accounts and expenses of non-governmental public institutions and private and cooperative institutions, part of whose credits are financed from the national budget, or, considering the meaning of the phrase "approved credits" in Articles 53 and 55 of the Constitution, are the accounts of these institutions subject to the examination of the Court of Accounts only within the limits of the credits that have been approved and allocated for them in the national budget? Answer: Article 55 of the Constitution governs the credits that have been approved in the national budget, and the Court of Accounts' jurisdiction in examining and auditing is limited to those cases.

[2] To see an example, see: Budget Law 2024; Appendix 3; Budget of Profitable and Break-Even Banks; p.106.

[3] Article 2 of the Court of Accounts Law.

[4] Like Note 3 of the 2024 Budget Law.

In addition to the supervision of the representative of the Ministry of Economic Affairs and Finance, the Planning and Budget Organization is also responsible for supervising the preparation and implementation of the budget in all executive bodies based on Articles 1 and 5 of the Planning and Budget Law and the clarification made in all development program laws.

In order to receive the budget, government institutions must also go through the process of allocating funds from the Planning and Budget Organization, which is also a form of additional supervision over the budget expenditures of these institutions before the treasury deposits the funds into the institution's account. However, the action to obtain funds from the treasury and then use the funds must be carried out with the permission of the accountant and in accordance with the coordination made.

The budget of government companies, after being formulated and approved in the general assembly, must be approved by the Planning and Budget Organization so that it is reflected in the national budget. However, government companies do not need the Planning and Budget Organization to allocate funds to implement the budget from their internal resources and can receive money from their centralized funds in the national treasury by preparing a fund request form by the accountant[1]. In addition to issuing withdrawal permits, the accountant also supervises the financial affairs of the government company and the manner in which the funds are used, including development and expenditure funds. This supervision is in addition to the supervision of internal inspectors of government companies. Regarding the manner in which accountants act in government companies, these companies are subject to the Law on the Establishment of the Auditing Organization, approved in 1983, and the statute of that organization, approved in 1987 (Erfani, 2006)[2].

Regarding the supervision of the accountant over non-governmental public institutions, we must say that according to Article 137 of the Public Accounting Law, these institutions are required to directly provide all financial information requested by the Ministry of Economic Affairs and Finance that it deems necessary for the performance of its duties. Also, Note 5 of Article 72 of the aforementioned law states in this regard: The accounts and documents of the expenditure of current credits and development plans of non-governmental public institutions and institutions must be examined by the

[1] Article 39 of the Public Accounting Law.
[2] Also, see: Regulations on the Selection of Auditors for government Companies, approved by the Council of Ministers in 2008.

auditors selected by the Ministry of Finance before being approved by the relevant legal authorities, and their annual accounts must be submitted to the Court of Accounts for audit. Therefore, non-governmental public institutions are also subject to financial supervision before spending by the Ministry of Economic Affairs and Finance. In addition to the possibility of issuing financial and accounting circulars, this supervision prescribes the authority to report the financial information of the aforementioned institutions through accountants appointed in the apparatus and also the legal entity of the General Treasury located in the Ministry of Economic Affairs and Finance. Despite the prescription of this supervision, it should be noted that the supervision of the accountant over non-governmental public institutions is based on Note 2 of Article 31 of the Public Accounting Law, given that the entire budget of these institutions is not government-owned, and is limited to the funds that are delivered to these institutions from public revenues, and in other cases, they do not have the right to supervise (Rostami & Hosseini-Pour, 2009; Moradkhani et al., 2019).

Regarding the supervision of the accountant over the operations of the Central Bank, we must say that according to Article 76 of the Public Accounting Law, which prescribes the necessity of ministries, government institutions, and government companies using accountants, it has excluded banks, insurance companies, and credit institutions. Based on this exclusion of banks and the law enforcement authorities' perception of the Central Bank as other commercial banks, there is no accountant in the Central Bank and there is no organizational position related to it. Of course, this measure is based on the philosophy of the Central Bank not receiving government budget, but its legal justification is incorrect.

In addition to the supervision mentioned above, the Central Bank, like joint-stock companies, is under the financial supervision of internal inspectors, known as the Supervisory Board, in accordance with the Monetary and Banking Law and the Central Bank Law. The Supervisory Board[1] is responsible for auditing the Central Bank's financial statements and preparing related reports, reviewing the Central Bank's assets and liabilities at least once every three months, preparing a report of changes, and preparing periodic and ad hoc reports regarding the Central Bank's performance in terms of compliance with laws and regulations, and allocating the Central Bank's budget.[2] Of course, as we mentioned earlier, in addition to the Supervisory

[1] Article 22 of the Monetary and Banking Law; Article 17 of the Central Bank Law.
[2] Its approval is the responsibility of the General Assembly.

Board, the task of budget allocation is also considered a duty of the General Assembly according to the new law, but the separation of duties and the manner of its implementation and supervision of the Central Bank budget in these two institutions is not clear.

In terms of financial supervision by the Court of Accounts, the Auditor General, and the Planning and Budget Organization, the Central Bank, from a legal perspective, is similar to non-governmental public institutions with financial independence from the government and, given that it does not use the government budget, is not subject to their financial supervision. Of course, currently, the executive status of financial supervision is applied differently and the ordinary legislator considers the Central Bank to be subject to the general regulations of the Court of Accounts supervision, but the Auditor General's supervision does not apply to the Central Bank due to the lack of supervision of commercial banks.

Table 5
The status of public law entities from a financial perspective

Types of Public Law Entities	Financial situation of individuals	Central Bank Status
Government institution	Capital: Fully government -owned	●
	Budget: Fully government-funded	○
	Transactions: Accounting Law	○
	Taxes: Non-payment	○
	Accountant supervision: Yes	○
	Court of Accounts Supervision: Yes	●
Government Company	Capital: Over 50% state-owned	●
	Budget: Its budget is in the general budget of the country	●
	Transactions: Commercial Law	○
	Taxes: Payment of taxes	●
	Accountant supervision: Yes (no need for allocation)	○
	Court of Accounts Supervision: Yes	●
Non-Governmental Public Institution	Capital: There are different ranges	
	Budget: Less than 50% government -owned	●
	Transactions: Non-compliance with the Accounting Law	●
	Taxes: Payment in cases of profit-making activity	●
	Accountant supervision: No	●
	Court of Accounts Supervision: In cases of use of the state budget	○

Source: Research Findings

3.6 Judicial Affairs

Private legal entities operate in their own name and account and are litigants in courts under their own names. Of course, this does not mean that the government does not supervise the activities of these entities. Lawsuits against them are filed in public courts like natural entities, and in filing lawsuits and defending themselves, like natural entities, they are subject to general laws and regulations, including civil and criminal procedure, but in some cases, such as criminal liability and specific commercial lawsuits such as bankruptcy of legal entities, special laws and regulations apply to them.

Unlike private individuals, public law entities, especially ministries and government institutions, act in the name and on behalf of the government and are parties to the lawsuit. There is no consensus on this issue regarding other entities. From the perspective of legal principles, all institutions enjoying public power privileges, including ministries, government institutions, and also those non-governmental public institutions that aim to provide public services, are subject to the judicial supervision of the Administrative Court of Justice[1] so that they do not exceed the limits of the granted authority. government companies, based on this statement, are not subject to special judicial supervision; because they have a profit-making purpose and do not enjoy special privileges based on principles. This supervision, including supervision of case-by-case and general decisions of these institutions, is carried out by the Administrative Court of Justice. In practical practice, the perception of the government in the field of judicial supervision is defined based on the use of public capital and budget. Therefore, based on this interpretation, ministries, government institutions, and government companies are fully under the supervision of the Court of Administrative Justice in their case-by-case and typical decisions; while non-governmental public institutions are only subject to the supervision of the Court of Justice in specified cases, and the mention of some instances and the omission of others has no specific basis. As a result, some non-governmental public institutions, despite using sovereign privileges, can, like private individuals, file lawsuits in the branches of the Court of Administrative Justice.

The Central Bank, in view of its purpose of providing public service, enjoys the privileges of public power, such as the possibility of adopting general decisions and case-by-case decisions containing rights and obligations for citizens. Therefore, based on legal principles, it should be subject to the judicial supervision of the Administrative Court of Justice. In the judicial procedure of the Court, without entering into the nature of the Central Bank, complaints of the people against the regulations (general decisions) issued by the Central Bank are heard in the plenary session of the Administrative Court of Justice in accordance with Article 12 of the Law on the Administrative Court of Justice, and this is also present in the procedure. Regarding complaints against case-by-case decisions, the current procedure[2] for accepting claims against the Central Bank is also confirmed. In other claims against the Central Bank and in lawsuits filed by the Central Bank against natural and legal entities with private rights as plaintiffs, this institution acts like other organs under the legal personality of the state. Therefore, from this

[1] Refer to: Principles 170, 173 of the Constitution of the Islamic Republic of Iran; Law of the Administrative Court of Justice.

[2] Example: File No. 140231390001903848 dated 2023/10/16, Branch 35 of the Administrative Court of First Instance; Document No. 140231390002574641 dated December 25, 2023, Branch 9 of the Appeals Court of Administrative Justice.

perspective, regardless of the nature of the Central Bank, this institution has been considered similar to state institutions and government companies.

Table 6
The status of legal entities from the perspective of judicial affairs

types of public law entities	Status of individuals from the perspective of judicial affairs	Central Bank Status
Government Institution	Under the supervision of the Court of Justice and the Inspection Organization	●
Government Company	Under the supervision of the Court of Justice and the Inspection Organization	●
Non-Governmental Public Institution	Different spectrum based on specified cases	○

Source: Research Findings

4 Conclusions and Suggestions

The founding laws and the laws that determine the scope of the duties and powers of the Central Bank, which have been in existence for more than sixty years, do not explicitly state the legal nature of this institution and its actions. The mere mention of laws in the field of the legal system governing the said institution is a failure to comply with general laws and regulations related to the government and enterprises established with government capital, as well as compliance with laws related to joint-stock companies in cases where no provision is provided for in the law. The approval of the new Central Bank Law and the repeal of articles related to the legal nature of the bank in the previous law and the mere mention of the independence of this institution have added to the previous doubts. Therefore, identifying the nature of the Central Bank is doubly important after the enactment of the new law, so that in cases of ambiguity resulting from legislative silence, we know how to deal with the Central Bank in various matters, including employment, administration, judicial supervision, administrative supervision, financial affairs, and transactions, and we can apply the provisions governing one of the four types of public law entities, including ministries, government institutions, government companies, and non-governmental public institutions, in all cases of general legislative provisions to this institution.

Considering the similarities and differences between the Central Bank and various types of public law entities, it seems that although the Central Bank is similar to government companies in some respects, especially financial and structural matters, the existence of a fundamental difference between the two does not allow the Central Bank to be classified as government companies, and that is the existential philosophy and purpose of these institutions. As we mentioned in the text of the research, before the announcement of the general policies of Article 44 of the Constitution (2005) and, consequently, the definition of government companies in Article 4 of the Management Law (2007) and the enactment of the Policy Implementation Law (2008), the activities of government companies were perceived to have the dual role of earning profit and providing public service. Perhaps with this same perception of government companies providing public service and, as a result, enjoying public power privileges, the Central Bank was also prescribed to follow the regulations related to joint-stock companies. However, the period after the announcement of the policies limited government companies to entrepreneurial and profit-making duties and also took back all their sovereign powers. Therefore, in the period before the 1380s, we could perhaps consider the Central Bank as one of the examples of government companies, but with the establishment of general policies and also the two recent laws mentioned, there is a conflict of existential philosophy between these two institutions. Therefore, mentioning the Central Bank under government companies due to carrying out some for-profit activities or being at the head of government commercial banks is placing this institution on the wrong path that treats the Central Bank like a state businessman and can also undermine the purpose of regulation and monetary policymaking and the exercise of public power of this institution.

This view is also present in the International Court of Justice’s rulings on the separation of the assets of the Iranian government and the Central Bank. The Court’s ruling, which was based on Iran’s argument that the Central Bank is a government company, stated that: First, an institution that is wholly or partially owned by the government can be a company; second, an institution that only carries out governmental activities and does not engage in activities of a commercial nature cannot be considered a company that has commercial activities and is in a competitive market. As a result, it has deemed it necessary to examine the nature of the Central Bank. According to the text of the ruling, as we can see, in the first step, a government company is considered part of the government and if the Central Bank is a company, its immunity is not considered to be possible to be raised; and in the second step, considering the different purpose of the Central Bank and the government company, it has not accepted the nature of the Central Bank as a government company.

Given the fundamental objection regarding the central bank being subordinate to government companies, it seems that the closest title to the central bank is non-governmental public institutions. Non-governmental public institutions include scattered organizations that were established after the revolution to carry out part of the government's duties in providing welfare to the poor and did not fall within the scope of the two types of government institutions and government companies.

As their scope of activity expanded, with the introduction of a new category of public law entities, these institutions were identified as non-governmental public institutions, and their scope was gradually expanded. The basic characteristics of these institutions are the provision of public service, the existence of legal independence from the government, and the provision of the main budget through the institution itself, which are established with the permission of the law. Considering the generality of Article 3 of the Civil Service Management Law, any institution that has these characteristics, even private individuals providing public services, are included in this classification. It seems that considering that before the revolution, public law entities were limited to three categories: ministries, government institutions, and government companies, the legislator applied the rule of inclusion of the law on them "requires mention" or "the name must be specified" so that some individuals, despite performing public duties, are not subject to strict government regulations, but in some cases, in enjoying the privileges of public power, are protected by the government due to the provision of public service. A title that is unnecessary with the creation of non-governmental public institutions. It is likely that if the current title existed before the revolution, the Central Bank would have been explicitly included under it.

Regarding the Central Bank, two prominent aspects of these institutions are of great importance: the first is the goal of providing public service and the second is the existence of independence from the government, including administrative, financial, structural independence, etc., which both have independence in the field of employment, administration, and to some extent financial affairs. Although the dismissal and appointment of the Central Bank’s members is currently under the supervision of political authorities, the existence of independence in the Central Bank and also in the aforementioned institutions guarantees the performance of their public duties without applying political pressure. In fact, the main similarity of these two institutions is that in cases of violation, existing laws and regulations need to be amended, not that the Central Bank does not fall under these institutions; for example, like many non-governmental public institutions, the appointment of the Governor of the Central Bank is done with the approval of the Leader.

From a financial perspective, it may be argued that the capital of the Central Bank is government and, like commercial companies, it has a balance sheet and a profit and loss account. In response to this objection, we must say that, as we mentioned earlier, in the case of non-governmental public institutions, the amount of capital provided by the government is not the criterion, and only the amount of the budget is taken into account. From this perspective, the Central Bank can be placed under these institutions, given that it does not receive any credit from the government. Secondly, although in the statutes of government companies and non-governmental public institutions, one emphasizes capital and the other emphasizes budget, there are instances of violation, such as the Foundation for the Oppressed of the Islamic Revolution, which, despite being a non-governmental public institution, uses the term "capital" for it. Like companies, it has foreseen the bodies of the assembly (board of trustees), inspector, and auditor (as a supervisory body) for its financial affairs, and it has a balance sheet and financial statement. This is because, like the Central Bank, the foundation also has the goal of serving and benefiting the public, but due to its nature, it engages in for-profit activities to advance its goals, which leads to profit and income for it.

With this division, as we stated in financial supervision, given that the Central Bank does not use the public budget, unlike non-governmental public institution s with common characteristics, it will not be under the financial supervision of various government bodies, so that its financial independence will be violated; although some means must be foreseen for the Central Bank to be accountable to the legislative body. From the perspective of judicial supervision, given that we stated, the current type of supervision of the Court is different from the desired situation of supervision of all public service providers and benefiting from public power privileges, if we consider the Central Bank to be a non-governmental public institution, given the lack of mention of the general title of non-governmental public institution s in Justice Law, it will be necessary to specify the general title of these institutions or the name of the Central Bank to supervise complaints about case and employment decisions.

In addition, it is proposed that, considering the difference between the definitions provided in the Civil Service Management Law and the Public Accounting Law of non-governmental public institutions and different interpretations of these definitions, in order to remove the ambiguity of the Central Bank being classified as a non-governmental public institution, based on the views of the merger of the two laws that still consider the Public Accounting Law to be the rule in the financial field or from the perspective of formal criteria and the necessary mention in the law, by amending the law, it be clarified that the Central Bank is classified as a non-governmental public institution; although based on the theory of the rule of the Management Law, which is the latter, the existence of the conditions of Article 3 of the Management Law in an institution is sufficient for it to be classified under this title.

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