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Feasibility of Contractual Liability of Foreign Investment Companies in Iraq

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This study aims to provide an in-depth and analytical examination of the various dimensions of contractual liability of foreign investment companies in Iraq. The primary focus is on defining and identifying the constitutive elements of contractual liability, distinguishing it from other forms of liability, and clarifying the mechanisms for adjustment and exemption from such liability within the framework of Iraqi law. A precise understanding of these concepts is essential for sustaining economic and legal relationships between foreign investors and the host government. The research adopts an analytical–descriptive approach grounded in the theoretical foundations of civil and commercial law. Data were collected through the review of Iraqi statutory texts, legal doctrine, and sample investment contracts, followed by systematic legal analysis. The study is organized into two main sections: the first explores the essence of contractual liability (definitions and elements), while the second addresses its adjustment and avoidance (exemptions and external causes). The findings show that the contractual liability of foreign investment companies in Iraq is based on three fundamental elements: breach, damage, and the causal link between them. Breach may arise from failure to comply with technical standards, failure to employ advanced technology, delays in performance, failure to disclose essential information, or failure to train local personnel. Moreover, Iraqi law (e.g., Article 259 of the Civil Code) permits agreements to exempt or adjust liability, except in cases of fraud or willful misconduct. External causes such as the breach of the other contracting party or the act of a third party may also lead to the exclusion of liability. A sound understanding of the concept, elements, and exemptions of contractual liability is vital for establishing a secure and predictable environment for foreign investment in Iraq. By providing a comprehensive legal analysis, this study can serve as a valuable reference for legal scholars, consultants, and policymakers in strengthening Iraq's legal and economic frameworks and facilitating the attraction of foreign capital.

Keywords: *foreign investment, contractual liability, Iraq, exemption from liability, elements of liability*

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1. Introduction

In today's world, foreign investment plays a pivotal role in economic growth and sustainable development. Countries — particularly Iraq during its reconstruction period — need to attract foreign capital by establishing clear and transparent legal frameworks. Investment contracts, by defining the obligations and rights of the parties, form the foundation of these relationships, and the concept of contractual liability serves as the guarantee for the proper execution of such obligations. However, the complex nature of international relations, cultural and legal differences, and the extensive obligations often embedded in investment contracts may lead to disputes that challenge the fulfillment of commitments. In such situations, a clear and precise understanding of the concept of contractual liability, its constitutive elements, and the conditions under which exemptions may apply becomes essential for all stakeholders — including foreign investors and the host state. This understanding not only helps maintain stability and predictability within the investment environment but also safeguards the economic and legal interests of the parties involved.

The present article seeks to provide an in-depth and analytical examination of the various aspects of contractual liability of foreign investment companies in Iraq. Drawing upon the theoretical foundations of civil and commercial law, this study aims to define contractual liability precisely and distinguish it from other forms of liability (such as tortious liability). Furthermore, it identifies and explains the elements necessary to establish such liability. In addition, one of the most practical and significant aspects of contractual liability — the mechanisms of exemption — is analyzed. This includes the study of "external cause" or force majeure, as well as the validity and limits of agreements between the parties to modify or exclude liability.

The ultimate goal of this research is to provide a comprehensive and practical perspective on the contractual liability of foreign investment companies in Iraq so that it can serve as a reference for jurists, legal advisors, investors, and policymakers. Such a perspective would help create a safer and more reliable environment for foreign capital inflows into Iraq. A sound grasp of these concepts constitutes an essential step toward strengthening Iraq's economic and legal relations with the international community. The study is structured in two main sections: the first examines the nature of contractual liability of foreign investment companies in Iraq — including its definition, elements, and distinction from other liabilities — while the second analyzes the mechanisms of adjustment and avoidance of this liability, including exemptions and external causes.

2. The Nature of Contractual Liability of Foreign Investment Companies in Iraq

The discussion of the nature of the contractual liability of foreign investment companies in Iraq requires first clarifying the concept itself, to determine what is meant by contractual liability in the investment context, since the notion of liability in investment contracts differs from the general rules of civil liability.

2.1. Concept and Understanding of Contractual Liability of Investment Companies

Based on the principle that "a contract is the law of the contracting parties," the contractual liability of foreign investment companies requires that the parties fulfill their contractual obligations. Delay or failure by either party in performing their obligations may lead to the imposition of contractual liability. Such liability may arise from a direct breach or fault committed by the investment company itself or by other persons for whom it is responsible. As a fundamental component of commercial and economic contracts, it guarantees adherence to agreed commitments. Studying the concept of contractual liability of foreign investment companies in Iraq first requires defining "foreign investment" and then clarifying the intended meaning of "contractual liability."

2.1.1. Definition of Foreign Investment

Legal scholars do not agree on a single definition of an investment contract. Some define it as a contract concluded between developing countries and either developed countries or persons acting on their behalf for the exploitation of natural resources or the establishment of industrial enterprises for long-term development (Mustafa, 1991). Others state that an investment contract is an agreement signed between a state and a foreign legal entity directly related to activities included in that country's economic development programs (Al-Qasabi, 1993). The French Court of Appeal has defined it as a contract that extends beyond the domestic economy and involves the cross-border transfer of funds, goods, and services — essentially an international long-term agreement with predominantly international interests (Sharaf al-Din).

Under Iraq's Investment Law No. 31, as amended in 2006, the Iraqi legislator has not provided a comprehensive definition of "investment." However, the law distinguishes between domestic and foreign investors, specifying that a foreign investor is a person authorized to invest who, if a natural person, does not hold Iraqi nationality, and if a legal person, is registered abroad.

Because Iraqi civil law does not assign a specific term to foreign investment contracts, such a contract is simply an agreement concluded between the parties, the product of their free will and equal status, consistent with conditions that do not contravene public order or morality; consequently, the general rules of civil law govern it (Al-Dhanoun, 2006).

Foreign investment is generally of two types:

(a) **Foreign Direct Investment (FDI):** This refers to the allocation of non-national funds to fixed capital assets within the host state. It implies a long-term relationship in which profits return to the foreign investor. Such an investor — whether a natural or legal person — retains the right to manage their assets from the place of investment (Al-Hasan, 2014). FDI may occur through establishing a company or acquiring all or part of an existing company in a foreign state, whether as a branch for production, procurement, sales, or other productive or service activities. What distinguishes FDI from other types of foreign investment is the foreign investor's control over the capital, technology, and management (Bertrand, 1982).

(b) **Indirect Investment:** This is a form of investment that resembles a specific type of lending to governments, public institutions, or foreign individuals. It typically takes the form of subscribing to the securities of such entities, whether through fixed-income bonds or shares, provided that foreigners do not hold shares that grant them the right to manage the project (Mustafa, 1972).

2.1.2. Distinguishing Contractual Liability from Tort Liability

Contractual liability differs from tort liability in several ways, including the following distinctions:

(a) **Difference in Source:** Contractual liability arises from an agreement between two parties, while tort liability results from negligence or failure to perform general legal duties.

(b) **Difference in Basis:** Contractual liability is founded on the contract and the obligations mutually agreed upon by the parties, whereas tort liability is based on legal norms and the principles of general law.

(c) **Difference in Content:** Contractual liability relates to obligations specified in the contract, while tort liability concerns duties established by general law.

(d) **Difference in Compensation:** In contractual liability, compensation is often predetermined in the contract, while in tort liability, compensation is assessed according to the actual harm suffered by the affected party.

(e) **Difference in Timing:** Contractual liability arises when contractual obligations are breached, while tort liability emerges when a wrongful act occurs independently after or outside the contract.

(f) **Difference in Defense:** A party charged with contractual liability may defend itself by proving that the breach was not due to its own fault or negligence, whereas under tort liability, the person claimed to be liable must prove they were not negligent or at fault.

2.2. Elements and Rules of Contractual Liability of Foreign Investment Companies in Iraq

Contractual liability, in all its forms, arises only when three essential elements — breach, damage, and a causal link between them — are present. In other words, the absence of any one of these elements prevents the establishment of contractual liability. For foreign investment companies, the existence of a valid contract and damage resulting from the breach of contractual obligations are fundamental requirements. Breach by the investing company — whether by failure to fulfill contractual obligations or by violating legal requirements — triggers contractual liability.

2.2.1. Elements of Contractual Liability of Foreign Investment Companies and Their Interrelation

Contractual liability consists of three main elements that must all be fulfilled: breach, damage, and causation. Each is examined below.

a) Breach

Breach is a fundamental element on which contractual liability is based. Its definition and the criteria for establishing it have been subject to significant scholarly debate. Many jurists support the traditional theory of breach, which requires two conditions: first, the intention to cause harm or the expectation of harm along with a harmful act; second, that the act be unlawful or in violation of the law (Āmir, 1979). Another group supports the theory of risk-bearing, meaning that any act causing harm to another obliges the actor to provide compensation. In this case, civil liability arises, but not contractual liability. The law provides for rules governing liability, stating that whether contractual or tortious, liability arises when one party, despite being aware of their obligations, fails to perform them and deviates from the contractual terms (Al-Dhnaybāt, 2020).

Examples of breaches by foreign investment companies may include:

1. Failure to comply with local technical standards at the project site — foreign investment companies are obliged to respect the prevailing technical norms relevant to the project's location, whether the contract involves oil, construction, or other sectors (Khalil, 2010).
2. Failure to use advanced technology — foreign investment companies are expected to employ up-to-date technology in performing the tasks agreed upon in the contract (Issa, 2010).
3. Delay in executing project plans — this occurs when, despite a clearly specified timeframe set by the host country, the company postpones or slows the implementation of contractual provisions (Muhyi al-Din, 2009).
4. Breach of disclosure obligations — foreign investment companies are required to inform the host country of all developments arising during the project's execution and must keep the host government informed of the project's progress (Al-Ghunaymi, 2002).
5. Violation of Article 14 of the Iraqi Investment Law of 2006, which obliges companies to train and develop the local workforce and give priority to employing Iraqi workers.

However, for a breach to result in contractual liability of a foreign investment company, two essential conditions must be met:

1. The existence of a valid contract concluded between the state and the foreign investment company. Under Iraqi civil law, a valid contract — as described in Article 133 of the Civil Code (1951) — is one that is legally and substantively sound, issued by a person with full legal capacity, concerning a lawful and reasonable subject matter, supported by a legal cause, and free of essential defects.
2. Proof of damage caused by the company's breach of contractual obligations lies with the claimant. Thus, to establish contractual liability, the injured party must prove both the harm suffered and the company's failure to perform its contractual obligations. Conversely, in tort liability, the injured person must rely on the general legal conditions to prove the wrongful act and resulting harm (Al-'Aboudi, 1997).

b) Damage

The mere occurrence of a fault or breach is not sufficient to establish contractual liability; proving that harm has occurred to the other party as a result of the breach is necessary. Damage — a fundamental element of civil liability, whether tortious or contractual — means the infringement of rights, legal interests, or the deprivation of expected contractual benefits. Such damage may be material or moral and must result from the failure of the other party to perform contractual obligations (Fillali, 2002).

There are two kinds of damage: moral and material. Moral damage is defined as harm inflicted upon non-pecuniary legal interests such as emotions, dignity, honor, and reputation. Material damage refers to harm caused to the creditor's property due to the debtor's failure to perform contractual obligations (Āmir, 1979). For damage to be recognized, it must either have occurred in the present or be likely to occur in the future under predictable circumstances; purely hypothetical harm is not compensable. Compensation, as reparation for harm resulting from the act of one of the contracting parties, is recognized under Iraqi civil law. The burden of proving damage rests on the claimant since harm is the direct effect of breach, and entitlement to compensation depends on proof of harm by the injured party. Jurists have classified damage into categories such as material, moral, continuous, non-continuous, expected, and unexpected (Al-Hakim, 2012). Article 205/1 of the Iraqi Civil Code explicitly states that any infringement upon another's freedom, dignity, honor, reputation, social standing, or financial credit entails liability for compensation by the wrongdoer.

In the context of foreign investment companies, the concept of damage as a pillar of contractual liability emerges clearly. Failure to perform contractual obligations and infringement of the host country's lawful rights or interests — such as the use of unauthorized materials, defective or incomplete execution of contracts, and failure to achieve agreed-upon quality standards — constitute actionable harm (Al-Bakri, 2018).

For damage to give rise to liability, three conditions must exist:

(a) The damage must be realized — meaning that neither the investing company nor the host country is liable for purely potential harm; however, imminent future harm with clear grounds may also be compensable (Al-Bakri, 2018).

(b) Under Article 207 of the Iraqi Civil Code, compensable harm consists of direct losses resulting from breach or delay in performance, whether foreseeable or not. This means only natural and direct consequences of the wrongful act are compensable, while indirect harm is excluded because the causal link is broken (Al-Hakim, 2012).

(c) The harm must affect a lawful right or interest; violation of unlawful or illegitimate interests does not give rise to compensation (Al-Sanhouri, 2009).

2.2.1.1 The Link Between Breach and Damage

Causation, the third element of contractual liability, is distinct from breach. Its realization depends on the existence of a breach but is not automatically established by it. For contractual liability to be imposed, it is not enough for a breach and damage to exist; the breach must be the cause of the damage. In other words, causation is the direct link between the wrongful act of the liable party and the harm suffered by the injured party; without proving this link, no liability can be imposed (Al-Sanhouri, 2009).

When both breach and damage occur, establishing the causal relationship between them is essential. If the causal link is absent, external factors — such as force majeure, unforeseen events, fault of the injured party, or the act of a third party — must be demonstrated to exclude liability. Article 211 of the Iraqi Civil Code affirms this principle. For example, foreign investment companies contracting with Iraq's Ministry of Oil, when faced with claims for damages due to work stoppages, argued force majeure by citing widespread protests and insufficient protection by the Ministry as grounds for exemption from liability.

The burden of proving causation rests with the claimant, who must establish two points:

(a) The breach attributed to one of the contracting parties (debtor or creditor).

(b) That a causal connection exists between the breach and the damage suffered.

If the claimant fails to prove this, contractual liability will not be established (Al-Jubouri, 2018).

Accordingly, the injured party must prove that the investing company failed to exercise adequate diligence in performing its obligations, resulting in breach and liability. If the injured party cannot prove this, the company may deny liability by disproving the causal link between its conduct and the harm. The company can establish this defense by demonstrating an external cause that led to the damage (Nasr al-Din, 1998).

3. Aggravation, Exemption, and Exclusion of Contractual Liability of Foreign Investment Companies in Iraq

The parties to an investment contract — the host state (first party) and the foreign investment company (second party) — may agree on terms that modify contractual liability, provided such modifications do not conflict with mandatory rules, public order, or the provisions of Iraq's civil and investment laws. In this context, the parties can agree to adjust the rules of contractual liability, including aggravating or mitigating the investor's obligations. The first part of this section examines aggravation of liability, while the second addresses exemptions and exclusions of foreign investors' contractual liability.

3.1. Aggravation of Contractual Liability of Foreign Investment Companies

Sometimes the parties to an investment contract agree to increase the liability of the foreign investor toward the host state. This raises the question of whether such an agreement to intensify contractual liability is legally permissible.

3.1.1. Validity of Agreements to Increase and Aggravate Liability

Legally, the parties to an investment contract may agree to aggravate the contractual liability of the foreign investor toward the host state. This is grounded in Article 259/1 of the Iraqi Civil Code, which allows the debtor to assume liability for extraordinary and force majeure events. This general principle underlying contract law justifies the parties' freedom to increase the investor's liability by agreement.

One rationale is that the general rules of contractual liability are not part of public order; therefore, the law permits agreements contrary to them, and Article 259 of the Civil Code explicitly allows deviation through aggravation of liability. Another rationale is that rules concerning contractual liability arising from personal acts also apply to the contractual liability of investment companies (Al-Dhanoun, 2006). Since no explicit legal prohibition on increasing contractual liability exists in investment contracts, such agreements are considered valid. The Iraqi Civil Code itself, in Article 259, permits the debtor to increase their liability for their own acts and stops there.

3.1.2. Types of Increasing Contractual Liability

Increasing the liability of investment companies for acts committed by others is permissible, and such aggravation may take several forms:

(a) Given the absence of a legal prohibition, the parties to an investment contract may agree that the investor's obligation shall be one of achieving a specific result rather than merely exercising due diligence. Although the default principle is diligence-based obligations (as with foreign investment companies drilling oil wells), this agreement is valid (Hiyawi, 2003). In such cases, if the agreed result is not achieved, the company is liable regardless of whether the failure resulted from its own act or from an act committed by another person engaged in performing the investment contract (Ja'far, 2011). The investor cannot argue that non-achievement was due to a third person acting on its behalf, because such persons are not considered external to the company; thus, the company remains responsible.

(b) The parties may agree that the investment company will bear the consequences of external causes such as force majeure, unforeseen events, or the acts of others — even though the general rule provides that if failure to perform contractual obligations arises from an uncontrollable external cause, contractual liability is excluded (Tayeh, 2005).

(c) The parties may agree that the investment company will assume responsibility for extraordinary, unforeseeable damage. Although the relationship between the host and the investment company is governed by contract and normally only contractual liability is recognized (not tort liability) (Akkoush, 1957), the company becomes liable for extraordinary, unforeseeable damage if such a clause is included. Without such an agreement, the company is not liable for extraordinary, unforeseeable harm caused by acts beyond its control; it is only responsible for direct and foreseeable losses.

3.2. Exemption and Exclusion of Contractual Liability of Foreign Investment Companies

Sometimes the host party and the foreign investor agree that the investor shall be exempt from contractual liability and not pay compensation. Since exemption from contractual liability involves altering the ordinary allocation of risk, certain legal principles govern such agreements:

3.2.1. Conditions for Exemption from Contractual Liability

The parties to a contract have the freedom to agree on exempting one party from certain contractual obligations. Such exemption may be expressed explicitly or implicitly in the contract and is particularly significant in commercial transactions with high risk of severe losses. Because contractual liability is not considered part of public order, its modification or exclusion is generally permissible. Moreover, the rules of civil liability allow an investment company to avoid contractual liability by proving it played no role in causing the damage due to an external cause.

(a) **Existence of an External Cause**

An external cause is any act or event not attributable to the debtor, the effect of which is to exclude liability for the damage inflicted on the other party (Marqus, 1997). This is one of the strongest defenses against contractual liability. When an external cause exists, the causal link between breach and damage is broken — for example, force majeure, meaning an unforeseeable and uncontrollable event beyond the investor's power to prevent, rendering performance impossible and freeing the investor from liability (Al-Faḍl, 1991).

External cause has been defined as "something unrelated to the creditor yet resulting in damage suffered by the creditor" (Jamal al-Din, 1978). According to Article 168 of the Iraqi Civil Code, a debtor is liable for damages resulting from non-performance unless it proves that impossibility of performance arose from an external cause beyond its control. If the investment company demonstrates that an external factor, such as the act of an unrelated third party, prevented fulfillment of obligations, it will not be liable to the host state. Such factors include unforeseen events, force majeure, the act of another, the fault of the injured party, and natural disasters, as also mentioned in Article 211 of the Civil Code (Al-Hakim, 2012).

Once the court is satisfied that an external cause occurred, its legal effect is to relieve the investor of contractual liability, and the host state cannot claim compensation. Proof of an external cause severs the causal link between the company's breach and the harm suffered (Tayeh, 2005).

In assessing harm caused by external factors, it is essential to distinguish between actual harm and statutory provisions. Damages resulting from force majeure, natural disasters, and extraordinary unforeseen events exempt the debtor from contractual liability and compensation. Conversely, harm resulting from a third party requires distinguishing between mere intervening fault and shared causation. The act of another is treated as an external cause only if the company proves that the harm came from a third party's act that overshadowed its own contractual fault (Al-Hakim, 2012).

Where a third party's wrongful act combines with the contracting party's own fault, both are liable toward the injured party. However, this liability is not solidary, because the legal basis for each is distinct. The injured party may claim compensation from either party according to their share of fault, or seek the full amount from one of them.

Unforeseen events and force majeure, although conceptually distinct, are treated similarly in Iraqi law: both are unforeseeable, unavoidable, and make performance impossible. However, "force majeure" is the term most frequently used in legal doctrine and includes unforeseen events and natural disasters alike (Jamal al-Din, 1978). For force majeure to apply, two conditions must be met: the event must be unforeseeable and unavoidable, and it must render performance of the contractual obligation impossible (Al-Sanhouri, 2009).

b) Breach by the Contracting Party

The contracting party is obligated to comply with the training regulations and internal rules of investment companies and to cooperate in the performance of contractual obligations. These obligations vary depending on the subject of the contract. In executing the provisions of the investment agreement, care and prudence are necessary; however, the contracting party is not obliged to adopt methods that guarantee the absolute prevention of damage. Breach by the contracting party is considered an external cause, and unless the investment company proves that the contracting party itself caused the damage, contractual liability — whether partial or full — will be excluded.

c) Act of a Third Party

By "third party" is meant someone completely outside the contractual relationship. Such a person is not one for whose actions the company bears contractual responsibility toward the host state; therefore, the act of a true outsider is treated as an external cause that negates the causal link between breach and damage (Zaki, 1978). The act of a third party, similar to force majeure, is an unavoidable external event that requires certain conditions to be met. Thus, all requirements applicable to force majeure also apply to the act of a third party. The act of another can, by creating an unforeseen and uncontrollable obstacle, relieve the investment company of liability to the host party, provided the company could not have prevented the obstacle and it arose beyond the control of those hired to fulfill the contract (Hiyawi, 2003).

Where both the injured host and a third party engaged by the investment company contribute to the harm, and the liability is tort-based, the law treats the roles differently. Article 217 of the Iraqi Civil Code states that if several persons are liable for an unlawful act, all are jointly responsible for paying compensation, without distinction between the principal actor, partners, or instigators. A party who pays full compensation may seek proportional recovery from the others according to their degree of fault.

In the contractual relationship between the host state and the investment company, "third party" primarily means one fully external to the agreement and also one engaged or employed by the company to assist in fulfilling contractual obligations. A breach by a truly external person counts as an external cause to exclude the company's liability.

If a foreign investment company proves that the wrongful act was not committed by it — because its liability stems from the act of another and not its own act — this alone does not free it from contractual liability. To be released, the company must negate fault on the part of those whose acts could create its contractual liability; it must prove that its collaborators or auxiliaries committed no fault (Al-Sarrāf, 1995).

Releasing liability by negating breach is closely tied to the nature of the company's obligation. Denial of breach excludes liability only if the company's obligation is one of due diligence rather than result. Where the obligation is result-based, the company is bound to achieve the agreed outcome and is considered in breach if it fails; in such a case, it cannot escape liability by denying fault of itself or others. Only proof of an external cause suffices. But in obligations of diligence, demonstrating proper supervision can relieve the company of liability (Tayeh, 2005).

When a foreign investment company successfully negates breach by others, two legal effects follow:

(a) **Extinction of Liability:** Contractual liability for the act of another cannot exist without the element of breach; disproving breach negates liability.

(b) **No Compensation:** If the company shows that it exercised proper oversight over those performing its obligations, it avoids paying damages because breach is not established on its part (Al-Shahāwi, 2005).

3.2.2. Agreements on Limiting Contractual Liability of Foreign Investment Companies

These agreements are contractual arrangements that adjust the consequences of breach differently from what the law ordinarily provides. Such adjustments may appear as total exemption, partial exemption, or reduction of damages (Fathi, 2004).

Two main principles govern such agreements:

- **Principle One:** Freedom of contract to limit the rules of contractual liability. Because a contract is the product of the parties' free will, that same autonomy justifies their ability to reduce liability.
- **Principle Two:** Modifications must remain within the framework of law and public order; any condition conflicting with mandatory legal rules or public policy is invalid (Hanan, 2022).

Article 259 of the Iraqi Civil Code allows the debtor to be exempted from liability arising from fraud or gross misconduct of its employees. This provision enables an investment company, by agreement with the other party, to release itself from liability for the acts of others assisting in performing contractual obligations, provided the misconduct is not intentional fraud or gross breach attributable to the company (Ja'far, 2011). Thus, the company may exempt itself from contractual liability for acts of others based on Article 259, a general rule applicable to contracts where no special prohibition exists.

3.2.3. Effect of Exemption from Contractual Liability

When a foreign investment company obtains exemption from contractual liability for the acts of others toward the host state, two main legal effects follow:

(a) **Scope of Exemption:** The investment company is released from paying compensation only to the extent defined in the exemption clause. This means that non-payment of damages applies solely to breaches covered by the agreed exemption. If the contractual clause exempts the company from liability for minor breaches but major breaches occur due to the actions of other collaborators in fulfilling obligations, the company remains liable for compensation (Al-Sanhouri, 2009).

(b) **No Shield for Third Parties:** If the investment company stipulates an exemption clause covering its contractual liability for acts of others toward the host, such exemption does not protect the third party itself. The third party cannot refuse to compensate the host by invoking the company's exemption. This is based on Article 259/1 of the Iraqi Civil Code, which permits exemption only for the investor's own contractual liability, not for the independent liability of outsiders. The underlying principle is that if the third party's liability is tortious and not contractual, agreements contradicting this cannot be imposed (Al-Sanhouri, 2009).

This analysis clarifies that exemption relieves the company but still allows the host to pursue claims directly against third parties for compensation. According to Article 259 of the Civil Code, contractual exemption may be partial or complete. In partial exemption, damages are reduced proportionally — for example, the parties may agree that the company pays only fifty percent of the total damages. They may also agree on a maximum cap for compensation payable (Abd Al-Jawad, 2013).

4. Conclusion

This study analyzed the concept, elements, and exemptions of contractual liability for foreign investment companies in Iraq. Foreign investment is a driver of economic growth and infrastructure development in countries like Iraq, yet its complexity and the reciprocal obligations it creates can lead to legal disputes over contractual responsibility. Because fulfilling contractual commitments is fundamental, contractual liability acts as the legal response to breaches. Understanding the key differences between contractual liability and tort liability — especially their legal basis, sources, content, timing, compensation mechanisms, and available defenses — is crucial.

The three essential elements of contractual liability — breach, damage, and causation — were shown to be indispensable. Breach, whether explicit or implied, can manifest in various ways, including failure to comply with technical standards, use of outdated technologies, delays in execution, lack of timely disclosure to the host government, and neglect of workforce training. A valid contract and demonstrable damage arising from breach are prerequisites to liability. Damage, material or moral, includes any loss or deprivation of benefit resulting from non-performance. Causation bridges the wrongful act and the harm, and without it, no liability exists.

Legal and contractual mechanisms to reduce or exclude liability were also examined. "Adjustment of liability" refers to altering its scope or severity, often through agreements to increase or decrease obligations. "Exclusion of liability" applies when liability is fully removed, particularly through proving an external cause or force majeure — unforeseen, unavoidable, and external events that make performance impossible. Agreements to mitigate or exempt contractual liability play a vital role, provided they do not conflict with public order or mandatory legal provisions and exclude cases of fraud or gross negligence.

Ultimately, a thorough understanding of the concept, essential elements, and mechanisms for adjusting and excluding contractual liability is crucial to creating a secure and predictable environment for attracting and sustaining foreign investment in Iraq. While Iraqi law offers protective measures to encourage investment, it also imposes obligations whose proper fulfillment ensures the success and durability of investment projects and safeguards national economic interests. This research aims to provide a clear and practical legal analysis to support legal practitioners, policymakers, and economic actors involved in foreign investment in Iraq.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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