

International Trade

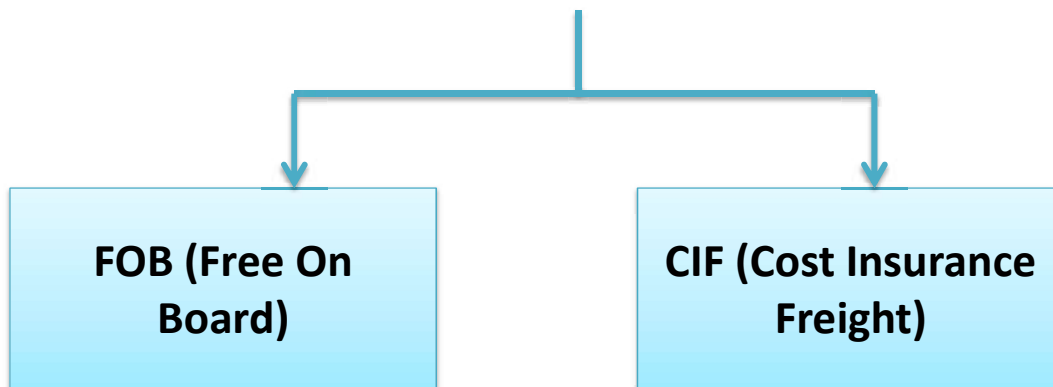
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Incoterms

- Special trade are used in the international sale of goods. Sometimes these trade terms have different meanings in different countries.
- Therefore, to avoid misunderstandings between the parties and to promote uniformity, the international Chamber of Commerce has published a set of terms which have a universal meaning. These terms are called Incoterms.

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Main types of contracts in the international sale of goods



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FOB Contracts

- This stands for “free on board” contracts.
- The cost of putting the goods on board the ship has to be borne by the seller.
- Delivery of goods is completed by the seller when he puts the goods on board the ship.
- The property in the goods passes to the buyer when the goods are placed on board the ship.
- In FOB contracts, the buyer has to bear the cost of freight and insurance.

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CIF contracts

- “ cost insurance freight” contracts.
- In this type of contract, the contract is performed by the seller by the delivery of the shipping documents to the buyer, and not by the delivery of goods.

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CIF contracts

Shipping documents:

- Bill of lading (BOL) - To signify a contract of carriage by sea.
- Marine insurance policy - To signify a contract of insurance.
- Invoice - To signify a contract of sale.

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CIF contracts

The CIF “ price” includes the following costs of:

- Goods
- Insurance
- Freight

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CIF contracts

Duties of a CIF seller

- To ship the goods of the description contained in the contract.
- To procure a contract of carriage by sea, under which the goods will be delivered at the destination contemplated by the contract.
- To arrange for an insurance policy, which will be available for the benefit of the buyer.
- To prepare an invoice for the goods.
- To tender, within a reasonable time after shipment, the BOL, the certificate of insurance and the invoice to the buyer, so that the buyer may obtain delivery of the goods if they arrive, or recover for their loss if they are lost during the voyage.

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CIF contracts

Duties of a CIF buyer

- To pay the price, less the freight , on delivery of the documents. He cannot defer payment until after inspected the goods.
- To pay the cost of unloading, lighterage and landing at the port of destination according the BOL.
- To pay all import duties and wharfage charges, if any.

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Finance in international trade

- Collection arrangements
- Letters of credit (documentary credit)

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Finance in international trade

- Governed by the “Uniform Rules for the collection of Commercial Papers” of the International Chamber of Commerce.
- These are generally done when the collection of the selling price is arranged at the buyer’s place. In this instance the seller hands over the shipping documents, including the BOL, to his bank (the remitting bank). and this bank in turn passes these documents to a bank at the buyer’s place (collecting bank).

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Finance in international trade

- The collecting bank then presents the BOL to the buyer, and requests him to pay to accept the BOL. Once the buyer does this, the collecting bank releases the shipping documents to the buyer. This enables the buyer to receive the original |BOL which allows him to obtain the goods from the carrier upon the arrival of the ship.
- The collecting bank must not release the shipping documents to the buyer, unless he pays in full or unless he obtains a Trust Receipt Loan arrangement with the collecting bank.

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Letters of credit (documentary credit)

- “Uniform customs and Practices (UCP) for Documentary Credits “ of the International Chamber of Commerce.
- Here the buyer instructs his bank (issuing bank) to open a credit with the seller’s bank (advising bank) in favor of the seller. The buyer also specifies the documents which the seller has to deliver to his bank, if he wants to receive finance. The buyer’s instructions also specify the date of expiry of the credit.
- Therefore if the seller produces the specified documents to his bank before the expiry of the credit, the bank pays the seller, in the manner as pre-arranged between the buyer and the seller.

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Types of letters of credit

- Revocable and unconfirmed LC
- Irrevocable and unconfirmed LC
- Irrevocable and confirmed LC
- Transferable LC

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Types of letters of credit

- **Revocable and unconfirmed LC:** under this LC, the credit can be revoked at any time.
- **Irrevocable and unconfirmed LC:** the buyer cannot revoke his instructions to the issuing bank to pay the seller,
- **Irrevocable and confirmed LC:** in addition to the buyer being unable to revoke the authority he gives to the issuing bank to pay the seller, the advising bank also adds its own confirmation issuing bank to pay the seller, the advising bank also adds its own confirmation of the credit to the seller.

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Types of letters of credit

- **Transferable LC:** this is seen when the seller has to first purchase goods on credit from a supplier, in order to sell them to the buyer. So when the buyer opens an LC in favor of the seller, the can transfer the same credit to the supplier, This transfer is done on the same terms on which the buyer opened it, except that the amount payable to the supplier by the seller, will be smaller, so as to account for the seller's profits.

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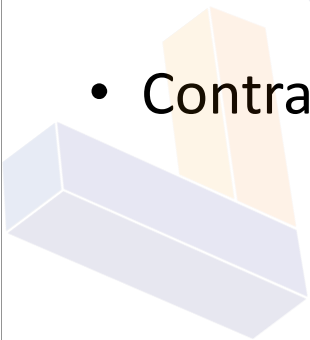
Transportation in international trade

- The main modes of transportation used in international trade are air, water and sometimes land.
- This is also known as “carriage by land, air and sea.” Carriage, in this instance, refers to transportation of both goods and passengers.
- Only the carriage of goods by sea and air are considered.

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Carriage of goods by sea

- Contract of affreightment.



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Carriage of goods by sea

Applicable law

- The Carriage of Goods by Sea Act (No.21 of 1982) .
- This Act incorporates the Brussels Convention on Maritime Law.

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Carriage of goods by sea

Main parties involved in the carriage of goods by sea

- **Ship owner**

He is owner of the ship. He undertakes to carry the goods on his ship. Therefore he is also known as the carrier of goods.

- **Charterer**

He is the person who hires the ship. He delivers the goods to the ship owner for transportation. Therefore he is also known as the shipper or consignor of goods.

- **Consignee**

He is the person to whom the goods are addressed to, The ship owner must deliver the goods to the consignee.

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Carriage of goods by sea

Freight

The consideration that is given by the charterer to the ship owner, for transporting his goods from one port to another.

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Carriage of goods by sea

Types of contracts for the carriage of goods by sea

- Charter party
- Bill of lading

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Carriage of goods by sea

Charter party

- A contract where the ship owner hires out the whole or a substantial part of the ship to a charterer, for the purpose of carrying goods from one port to another.
- Types of charter parties
- Voyage charter- This is a contract where a ship is hired for a particular voyage or voyages.
- Time charter- This is a contract, where a ship is hired for a specified time period.
- Charter by demise (bare boat charter) - This is a contract where a charterer hires and obtains possession and control of the empty ship. Thereafter he puts his own employees as the master and crew of the ship.

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Carriage of goods by sea

Main clauses of a charter party

The terms or clauses of a charter party are generally defined by the parties to the contract. However, most of these clauses are standard ones. Some of them are as follows:

- Name of the parties
- Name and nationality of the ship.
- The port where the ship is actually standing at that time.
- The implied term that the ship is seaworthy.
- Port of loading the cargo.
- Delivery of goods at the port of discharge.
- Payment of freight: This includes advance freight and dead freight. (Dead freight is paid by the charter when he fails to load the agreed quantity of goods.)
- Lawful merchandise: The goods loaded will be legal goods and not of a dangerous nature.
- Floating merchandise: This means that the ship owner will take the ship to the designated port or as near to the port as the ship can safely remain afloat.
- Ship owner's lien: This refers to the lien the ship owner has to retain the goods, until he is paid the freight charges.
- Caesar clause: This states that the liability of the charterer will cease, as soon as the goods are loaded on the ship.
- Expected perils: These are the risks for which the ship owner is not liable for.
- Lay days and demurrage: Lay days are the number of days allowed for the loading and unloading of the ship. If the charterer does not complete the loading and unloading within these days, he becomes liable for damages for the ship owner. Demurrage is the name given to these damages.

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Bill of lading (BOL)

- This is a document which is signed by the ship owner or master of agent on behalf of the ship owner, stating that certain goods have been shipped on a certain ship or have been received for shipment.
- A bill of lading sets out the terms on which these goods have been shipped or have been received for shipment.
- Once signed on behalf of the carrier, the BOL is handed over to the shipper.

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Classifications of BOLs

Classification 1

- Clean BOL
- Claused BOL

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Classifications of BOLs

Classification 2

- Negotiable BOL
- Non-negotiable BOL

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Main characteristics of a BOL

- It is a receipt issued by or on behalf of the carrier, by which he acknowledges that either he has shipped (loaded) the goods, or received the goods for shipment.
- It is evidence of the contract of carriage by sea, since it contains the terms of the contract.
- It is a document of title, since the carrier is required to deliver the goods only to the person who presents the original BOL to him.

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Carriage by air

- Transportation of passengers and goods by air.
- The law relating to carriage by air is based on the rules agreed at the following international conventions:

The Warsaw Convention of 1929

The Hague Protocol of 1955

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Carriage by air

- **Passenger ticket**

This is the ticket issued by the carrier to the passenger for carrying him by air. Amongst others, this includes the terms and conditions of the contract between the passenger and the carrier.

- **Baggage check or luggage ticket**

This is the ticket issued by the carrier to the passenger, for carrying his baggage or luggage. This too contains terms and conditions of this contract.

- **Airway bill or consignment note**

A consignor of goods makes this document, and delivers it to the carrier.

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Carriage by air

Liabilities of a carrier by air

- Liability for the death and bodily injury of a passenger.
- Liability for damage or loss to a passenger's baggage or luggage.
- Liability for delays or cancellations of the flight.

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Insurance in international trade

- It is mainly marine insurance that we are concerned with at this level. For a detailed discussion on marine insurance, refer Chapter 7 - Insurance.

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International commercial dispute resolution

Alternative dispute resolution (ADR) Sri Lanka

- Arbitration
- Mediation
- Conciliation
- Ombudsmen schemes

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Arbitration

Applicable law

- The applicable law in Sri Lanka is the Arbitration Act (No.11 of 1995)

Arbitration clause

- This is a clause which the parties may introduce into any contract they enter into. This clause states that a dispute between the parties in relation to the contract must be referred to arbitration before resorting to litigation.

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Arbitration

Appointment of the arbitrators

- The parties are free to fix the number of arbitrators they require to hear and settle their dispute.
- If the parties appoint an even number of arbitrators, then the appointed arbitrators will appoint an additional arbitrator, and he will act as the chairman of the arbitrators.
- If the parties do not fix a number of arbitrators, then by default, the number will be three (3).
- If the parties fail to agree or fail to appoint the arbitrator, the High Court has the power to do so.

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Arbitration

Place of arbitration

- This is generally mentioned in the agreement between the parties, failing which the arbitrator can decide on an appropriate place.

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Arbitration

Arbitration Procedure

- The parties can present their case either orally or in writing by way of affidavits.
- Parties can be represented as follows:
 - ✓ Personally, by themselves
 - ✓ By an officer, employee or agent
 - ✓ By an attorney-at-law
- The provisions of the Evidence Ordinance shall not be binding on the arbitration procedure.
- Witnesses can be called but they are not compelled to answer or produce documents, as in the Courts.

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Arbitration

Decisions of the arbitrators

- After allowing the parties to present their respective cases, and after examining all relevant documents and other material, the arbitrators will make their decision. Generally this decision is by the majority of the arbitrators.
- If a majority decision cannot be achieved, the decision of the arbitrator appointed by the other arbitrators or by the chairman, shall be binding.
- The decision must be in writing and signed by the arbitrators.
- Arbitrators have the power to refer the dispute to mediation or conciliation and seek a settlement by the parties.

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Arbitration

Arbitration award

- The arbitrators' decision
- On an application made to the High Court, within the stipulated time period, the award will be enforced by the High Court.
- On certain rounds, the High Court has the power to set aside an arbitration award.

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Mediation

Applicable law

- Mediation Boards Act(No.72 of 1988)

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Mediation

The process of mediation

- The disputing parties appoint a neutral third party to act as a mediator.
- The process of mediation is determined by the mediator and the parties collectively.
- Generally, each disputing party lists out the key issues of the dispute and submits these to the mediator and to each other.
- Thereafter the mediator makes his decision. This decision is not binding on the parties. It is up to the parties. It is up to the parties to accept it or not.
- The main difference between mediation and conciliation is that in mediation, the mediator consults the disputing parties separately and draws up the terms by which the dispute is to be resolved.

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Mediation

Mandatory mediation

- The Mediation Act states that all disputes where the value of the claim is less than Rs. 250,000 must be referred to mediation.
- If it cannot be resolved by mediation, then the non-settlement certificate issued by the Mediation Board must be produced in Court, in order to initiate court action.

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Conciliation

- This is a process where a neutral third party called a conciliator, who has been nominated by the parties to the dispute, tries to help the disputed parties to reach a settlement.
- This is more of a round table negotiation, aimed at arriving at a settlement for the dispute. The conciliator will actively participate in this discussion, and offer his views.
- The conciliator does not have the power to bind the parties by an order. It is the parties themselves, with the help of the conciliator, who should arrive at a mutually agreeable settlement.

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Ombudsman schemes

- An “Ombudsman”, refers to a “government official appointed to investigate complaints made by individuals against the government or public bodies.”
- It is like a “one-man Commission”.
- Generally, an Ombudsman is not bound to adhere to the rules relating to the law of evidence and legal procedures, which are seen in a normal court of law. Furthermore, no lawyers are permitted to appear before the Ombudsman. What is expected by waiving off these restrictions is speedy but fair settlements.

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Ombudsman schemes

Types of Ombudsman schemes in Sri Lanka

- Parliamentary Ombudsman
- Financial Ombudsman
- Insurance Ombudsman
- Tax Ombudsman

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Ombudsman schemes

Parliamentary Ombudsman

- His powers and functions are to investigate and report on complaints of the infringement of fundamental rights and other injustices committed by public officers, public sector bodies and institutions.

The following matters are not within his purview:

- Matters relating to members of the Armed Services and Police.
- Appointments, transfers, dismissals or disciplinary control of public officers.
- Matters relating to the Auditor General.
- Matters relating to the Commissioner of Elections.
- His report or judgment cannot be implemented unless the parties agree to comply. But since his report has to be tabled in Parliament, if Parliament deems fit, it can ensure compliance.

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Ombudsman schemes

Financial Ombudsman

- This Ombudsman is appointed by the company, Financial Ombudsman Sri Lanka (Guarantee) Limited, which was set up specifically for this scheme. His powers are listed in the Articles of this company.
- He has the power to inquire into complaints made by customers of banks and financial institutions who are members of this scheme. His decisions will be binding on these banks and institutions.

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Ombudsman schemes

Insurance Ombudsman

- This is very similar to the Financial Ombudsman scheme. The insurance Ombudsman can look into the following matters:
 - Delays or non-settlement of insurance claims.
 - Interpretation of insurance policies.
 - Complaints by insurance policy holders, against an insurance agent.
 - Matters referred to by the Insurance Board of Sri Lanka.
 - Matters referred to by the Consumer Affairs Authority of Sri Lanka.

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Ombudsman schemes

Tax Ombudsman

- He has the power to receive, and inquire into complaints made by the public, on any injustice arising out of a maladministration on the part of the tax officers.
- The report of the Tax Ombudsman, on his findings and recommendations, will be submitted to the commissioner General of Inland Revenue.
- Press Complaints Commission of Sri Lanka.
- This too is similar to an Ombudsman scheme. This Commission has the power to receive, inquire and make findings on complaints received by the general public on any press publication.
- Commissioner for Tourism Administration
- This scheme was set up to inquire into any tourism-related complaints. Examples for tourism-related complaints are; complaints on food and food prices; extravagant taxi fares; counterfeit products sold by misrepresentation at an exorbitant price; misleading and deceptive conduct; etc.

