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Investigating Letters of Credit and Marine Insurance in terms of FOB and CIF in Iraqi and Iranian Law

Wahab Obaid Jode[1]; Seyed Mehdi Saleh[2]; Siamak Jafarzadeh[2]

[1]Doctoral Student of Private Law, Faculty of Literature and Humanities, Urmia University, Urmia, Iran

[2*]Associate Professor, Department of Islamic Jurisprudence and Law, Faculty of Literature and Humanities, Urmia University, Urmia, Iran (Corresponding Author)

[3]Associate Professor, Department of Islamic Jurisprudence and Law, Faculty of Literature and Humanities, Urmia University, Urima, Iran

E-mail: whab1389@gmail.com[1]; sm.salehi@urima.ac.ir[2*]; s.jafarzadeh@urima.ac.ir[3]

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Abstract

The International Chamber of Commerce has taken steps to standardize commercial procedures by setting Incoterms, and two important and widely used terms CIF and FOB in international trade law are provided in these rules. Two important contracts in the discussion of the use of the terms CIF and FOB are related to letters of credit or LC and marine insurance. Despite the fact that letters of credit have been able to help a lot to use the terms FOB and CIF and provide a more reliable environment for businessmen, but while the laws of both countries have accepted letters of credit in their banking system, due to the inappropriate infrastructure of banking laws, the regulations Internally, they face challenges in their implementation, and since the currency resources of both countries are sensitive, it seems that there is no room for criminalizing the abuse of letters of credit separately in the laws of Iran and Iraq. In the insurance contract, it seems that even though the regulations and laws related to insurance in Iranian law are more complete than in Iraqi law, but in marine insurance, the laws related to insurance companies in Iraqi law interact more with international trade law and use It has facilitated the business terms of FOB for the buyer and CIF for the seller. On the other hand, the sanctions against Iran have had an impact on both the letter of credit and marine insurance and have affected the country's economy, so that it has faced challenges in using the terms CIF and FOB, but the term CIF is supported in Iran. increased because the government tends to receive the most foreign currency in the export sector.

Keywords: *FOB; CIF; Letter of Credit; Marine Insurance*

Introduction

With the increase in international transactions, various organizations such as governments, the United Nations and international organizations seek to facilitate them. In this way, by harmonizing

international trade laws, take measures to improve trade relations. One of the most important organizations is the International Chamber of Commerce, which has started publishing international sales and purchase contracts under the title of Incoterms since 1935, and in order to standardize the various practices and customs in various fields of trade, it has prepared appropriate rules and provided their interpretations. (Khazaei, 1993, p. 74). In fact, Incoterms are a set of standard commercial terms that specify the duties, risks and costs of transportation and delivery of goods between the buyer and the seller in international trade. There are two important terms FOB (Free on Board) and CIF (Cost, Insurance and Freight) in these rules, which are the subject of this article. One of the important reasons for the creation of these two terms is that the parties to the contract are unaware of the different business methods in the opposite country, which can cause disputes and legal claims, and as a result, waste time and create costs. (Honored Qalati and others, 2011, p. 44). Therefore, the terms CIF and FOB, which are used in order to avoid losses and conclude a better contract and finally to properly implement the obligations of the contracts, have been welcomed among the countries that experience trade by sea (Kirimipour, 2017, p. 113).). Carrying out exchanges in countries with different political, cultural and social characteristics and transporting goods from different borders is related to the exercise of the sovereignty of governments, therefore, an effort has been made to include Incoterms in a set of customary regulations whose task is to examine the way of dividing and apportioning risk and cost. obligations and obligations of the seller and the customer (Rangebrzadeh, 2019, pp. 52-53). The businessmen of Iran and Iraq have also used these two terms in business relations.

The rules of Incoterms are not the law, according to which they seek an executive guarantee, but these rules need to be included in the contract in order to be binding. Based on this, the seller and the customer can freely determine the type of term between them in the transaction, which specifies the obligations of the parties in the contract and leads to the creation of a common commercial language. In the laws of Iran and Iraq, each of the parties to the contract has obligations, and these obligations are in the form of the eleven terms of Incoterms in some ways similar to the laws and in some ways different from it. In any case, to determine that a custom is valid and admissible in international commercial contracts, it must be examined as a normal condition of that society or country and approved by the parties to the contract. What is certain is that in the use of terms in the internal territory of the countries, one cannot be indifferent to the internal laws of Iran and Iraq, but it must be accepted that the reforms of FOB and CIF, as two widely used terms in international law, are mostly the creators of custom. are subject to custom.

In the Civil Code of Iraq, there are many references to the need to refer to commercial custom, including the first paragraph of Article 163 of the Civil Code, which stipulates that: "Al-Ma'roof Al-Arafa Kalmashrat Sharta" means that what is well-known and common among people, even if it is not mentioned explicitly, is considered a statement. . Also, Article 164, which states: "1- People's habit and custom (specific or general custom) is a way to prove the Shari'a ruling. 2- What people act on is evidence and it should be acted upon.

Also, in Iran's domestic law, much attention has been paid to the source of customs in transactions. Article 225 of the Civil Code of Iran stipulates in this regard: "If something is customary in custom and habit, so that the contract is devoted to it without specifying, it is considered to be mentioned in the contract" or in Article 224 of this law it is stated: "The words of contracts It is predicated on common meanings. Therefore, it should be accepted that the international fame of these terms has created a kind of inverse effect on custom, which the civil law of Iran and Iraq also adhere to.

With this explanation, the concept of these two terms in the laws of Iraq and Iran and international rules will be examined first. Although there are international definitions about them, there may be separate definitions in the law of each country which are the purpose of their investigation.

First Speech: The Meaning of the Terms "CIF" and "FOB"

The First Paragraph: The Meaning of the Term CIF

CIF, which is known as CIF contract, is a term in international trade law that is proposed in the set of Incoterms regulations. In the customary laws of some countries such as Iran and Iraq, CIF is known as a contract. In fact, CIF is a term according to which the cost of goods, insurance and transportation are included in the obligations of the seller. "CIF" means "delivery of goods at the seller's place". Some jurists (Hamdi, 2002, p. 716) define "CIF" as follows: It is a sale by which the seller undertakes to deliver the goods to the buyer at the port and transport the goods with the ship of his choice, and also undertakes to Insuring the goods and concluding the contract for its transportation, while the buyer pays the price of the goods and the value of the insurance of the goods during the journey and the cost of transportation (Al-Maqdadi, 2009, p. 164).

The Iraqi Trade Law No. 30 approved in 1984 defines CIF in a way that is fully in line with the international concept, because in Article 301 of the aforementioned law, it is specified that the sale of "CIF" is a sale in which the seller is required to enter into a contract based on Transport the goods from the port of loading to the port of discharge, insure the goods against the risks of transportation, load them on the ship, pay the necessary costs and expenses for it and then add that cost to its price.

But regarding the use of the term "CIF" in Iranian law, it can be said that this term was created to meet the daily business needs, and it is mixed with other contracts and has become common in international trade, so it does not have a special title in the domestic laws of Iran, and this term can be used in The format of the provisions of Article 10 of the Civil Code of Iran. Therefore, although it does not have a place in Iran's relevant laws, many contracts with this title have been concluded and executed by Iranian businessmen in foreign trade (Darabpour, 2012, p. 29).

However, the conclusion and implementation of the term "CIF" contract as one of the nameless contracts with the general conditions related to contracts is still a challenge in Iranian law. Because according to the combination of sale with transportation contracts, insurance and other secondary contracts and trade customs in Iran, it has its own complexities and there are many differences of opinion in it. In Iranian law, the rights, obligations and duties of the parties are not separated, and they can be understood by referring to the works of the contract, and the method of compensation should also be sought in the options. This has been a problem in the business of negotiation, conclusion, implementation and settlement of disputes. The conclusion of the contract based on the term CIF, the preparation of bills of lading, insurance policies, and licenses are difficult. Therefore, in Iranian law, this term does not have a concept outside of nameless contracts, although discussions such as exchange guarantee have been discussed in it, but there has not been a comprehensive discussion regarding issues such as the time of the bill of sale or documents and transfer of risk (Darabpour, 2012, pp. 30-32).

But in choosing this term, it should be taken into account that since governments tend to receive the most foreign currency in the export sector and pay the least foreign currency in the import sector, therefore the Iranian government will also pay attention to the term CIF in exports. It was because the transportation of the goods and its insurance are done by the companies of the exporter's country. Therefore, in Iran for a long time, the central bank did not allow the purchase to be made in CIF mode, and now it also stipulates that insurance and transportation should be done with Iranian transportation and insurance companies. It should be noted that this term is related to the use of the contract of sale, so its use is considered unnecessary in other than sale. Also, it seems that this term does not work for the purchase and sale of goods that are not material, such as software, shares, or securities, and since it refers to cross-borders, if this term is used in Iran's internal purchase and sale agreement, it should be used in parts be removed from it (Kirimipour, 2017, pp. 123-124).

The transfer of risk in international trade law means that the transfer to the buyer at a certain moment causes the buyer to assume the consequences of possible losses (Darabpour, 1995, p. 51). In the CIF contract, the ownership is transferred when the seller submits the shipping documents to the buyer, although this is when the seller has not stipulated the right of lien for himself, and if certain or specific goods are sold, the ownership is not transferred until the time of loading. Because loading is one of the basic conditions of the CIF contract, and the insurance policy and bill of lading cannot be properly issued until the transportation contract is completed (Naimi, 2006, p. 113).

In Iran's domestic laws, in the sale contract, ownership is created for the customer as soon as it is concluded. This can help in explaining the attitude of the Iranian legislator. In paragraph one of Article 362 of the Civil Code of Iran, it is stated that "as soon as the sale takes place, the customer becomes the owner of the sale and the seller becomes the owner of the price". In Iranian law, a contract of sale is a contract of ownership, and through it, ownership is transferred in such a way that money is transferred from one person's property to another person's property (Safaei, 2005, p. 25). That is, the ownership of the seller is transferred with the contract. In fact, the criterion of transfer of ownership in the sale contract, regardless of whether the seller is specific or general, is considered to be a sale contract (Mohaqeq Damad and Ahmadifar, 2013, p. 97). The ownership view of the sale contract is taken from jurisprudence, and in jurisprudence, this has been spread in all types of sales and even general sales, and the time of transfer of ownership is considered to be the time of the contract, and the same opinion is also accepted in Iranian law (Katouzian, 1999, p.33). However, in some cases, doubts have been raised about the time of transfer of ownership of a general sale and it has been considered as a covenant, therefore, the time of transfer of ownership has been considered as the time of assigning or handing over the goods (Hosni et al, 2022, p. 2326).

According to Iranian law, according to Article 387 of the Civil Code, the warranty is transferred to the customer from the time of delivery of the goods, and according to Article 368 of the same law, the delivery takes place when the seller is placed under the control of the customer and the first transport operator is the buyer's attorney. Also, it cannot be considered that handing over the goods to him is actually handing over the goods to the buyer's client. The duty is to sell the goods to the customer, and transportation is the means of fulfilling the obligation. Now, if in the sales contract involving the transportation of goods, the seller is required to hand over the goods to the transport operator at a certain place, the transport operator can be considered as a lawyer, therefore, handing over the goods to him is considered as handing over to the client, and the seller, by handing over the goods to The carrier fulfills his obligation and is released from responsibility. Here, transportation is the subject of the obligation, not the means of its implementation, and the seller has completed his obligation by handing over the goods to the carrier.

Also, in Iranian law, there is a difference of opinion regarding the nature of the term CIF. It is also concluded along with the insurance contract (Darabpour, 2012, p. 11).

The Second Paragraph: The Meaning of the Term FOB

The FOB rule is a reasonable and low-risk rule in international shipping, especially in sea shipping. This rule is based on the known international trade custom and is also used in air transportation under the name of Airport FOB. According to the FOB rule, the seller is responsible for the preparation of the goods, commercial list and necessary permits along with the cost. Also, the transport and insurance contract is the responsibility of the buyer. The seller delivers the goods at the designated port and date, and the buyer must take delivery of the goods. The risks of the goods are borne by the seller until they pass the edge of the ship at the port of loading, and then they are transferred to the buyer. The costs are also checked in the same way and the cost of packing the goods is also borne by the seller. After concluding the contract, the buyer must send the necessary information about shipping and loading time

to the seller. Although the buyer has no obligation regarding product insurance, it is better to insure the product in order to be protected in case of risks during transportation (Yasaei, 2019, p. 27).

In other words, FOB is "a sale in which the seller agrees to pay for the goods sold, to deliver them to the buyer at the port of loading on the ship's deck designated by the buyer" (Al-Baroudi and Duidar, 2003, p. 250).

The Iraqi legislator, unlike the Iranian legislator, has defined the sale of "FOB" in the Iraqi Trade Law No. 30 of 1984 in Article 298 and has stipulated that: "It is a sale by which the goods are delivered on the deck of the ship that the buyer determines that it will be delivered to him at the designated port for loading. Based on this, the legal relationship ends at the time of transfer of ownership and the importer is obliged to conclude a contract of carriage and insurance of the transported goods, and also the importer undertakes to select the ship on which the goods will be transported under the terms of this contract. and specify and must also conclude an insurance contract, this requires the use of the services of the national transport fleet and national insurance companies of the countries that need such contracts in the transportation of imported consumer and manufactured goods, especially in many Developing countries, in order to maintain the stability of the prices of those goods in the domestic markets, through providing the cost of transportation and insurance services as a result of trading them as domestic services, such as the Islamic Republic of Iran, contribute a lot (Fayaz, 2012, p. 112).

In some countries, these terms have been localized, and in the territory of national sovereignty and to create unity in the territory of their sovereignty, they have taken action to compile these abbreviations and interpret them, and have determined their provisions through the enactment of laws (Kirimipour). , 2018, p. 113). However, no action has been taken in Iran yet. This term is also defined based on the philosophy of the International Chamber of Commerce to defend free trade (Jaafari, 2006, p. 43).

From the point of view of the Iranian government, in the import, the term FOB is desirable for the country, which has the least foreign exchange commitment, and the transportation and insurance of the goods are carried out by the companies of the country of the importer (Kirimipour, 2017, p. 123). That is, if the buyers do not want to pay the expenses in foreign currency, they resort to the FOB contract (Darabpour, 2012, p. 12).

The optionality of citing this term in Iranian law has not hindered its prosperity and success. Today, this term has been used by Iranian businessmen in many international contracts that require the transportation of goods by sea from one country to another. In addition to private contracts, most of the general and private conditions of sale and model contracts, which used to be the main source of customs and habits, refer to these terms, as these terms have created a kind of reverse effect on custom, which is referred to as commercial custom. They have been sold internationally and it has been accepted in Iran as well (Khazaei, 1993, pp. 77-78).

Therefore, in the FOB method, the exporter agrees to deliver the goods to the buyer on the ship's deck, so from the time the cargo leaves the exporter's warehouse until it arrives on the deck, the exporter must buy insurance for it. In fact, the buyer has an insurance interest after the cargo passes the edge of the ship and enters the deck (Dast Baz et al., 1995, p. 85) and after that the delivery takes place.

Second Speech: Contracts Involved in "CIF" and "FOB"

In this section, we examine two important contracts in international law that are related to the two terms CIF and FOB. First, we will discuss the letter of credit and then the marine insurance contract.

First Paragraph: Letter of Credit (LC)

In international trade, financial transactions are of particular importance, and traders choose CIF financial methods to reduce risk. Today, the most common method of paying for goods is a letter of credit, which is based on uniform rules, so that the letter of credit is considered the most important document in international trade (Kirimi, 1988, p. 91), which is also very common in FOB and CIF.

For the first time, uniform regulations in this regard were prepared and regulated by the International Chamber of Commerce in Vienna in 1933 (Skini, 2011, p. 50). The latest developments were made with the cooperation of the United Nations International Trade Law Commission and representatives from trade, industry, insurance, transportation, banking, etc. and its regulations were published in the publications of the International Chamber of Commerce, which is known as "UC Pi" (Solatifar and Hosseini Sadrabadi, 2015, pp. 114-115).

Letter of credit has been welcomed in both FOB and CIF because the letter of credit payment system has a high guarantee compared to other payment methods such as cash payment at the same time as the order or visual payment and the like and the interests of the seller and the buyer. are in conflict with each other and helps to establish a balance in maintaining the interests of the parties (Taram Seri, 2013, p. 133). With this explanation, we can be aware of its importance in FOB and CIF, so we will discuss its concept, nature and pillars in the laws of the two countries of Iran and Iraq.

A: The Concept of Letter of Credit

In Article 2 of the Uniform Laws and Regulations of Letters of Credit (UCP600), "Credit" is defined as follows: "It means any arrangement, by any name or description, which includes a definitive and irreversible commitment of the opening bank to accept payment The documents provided are according to the terms of credit. Acceptance of payment: i.e. a) Visual payment if credit can be used against visual payment. b) Establishing the obligation of term payment and payment of credit at maturity if the credit can be used against term payment. c) Subscribing to the bill issued by the beneficiary and paying the money.

Documentary credit, which is called Fath al-Ahmad in the Arabic term, has several definitions, some of which are mentioned here:

1. Some have defined it as the written commitment of the opening bank to the broker bank based on the importer's request and to the beneficiary's (exporter's) account, during which the bank undertakes to pay a certain amount within a certain period of time upon presentation of valid documents according to the terms of the credit. or accept checks issued with a certain value (Khaled Amin and Ibrahim, 2006, p. 278).

2. In its definition, some have said: It is an obligation issued by the bank according to the request of the customer, who is called the beneficiary (that is, the person requesting the order for the benefit of a third party, that is, the issuer) to pay or accept the checks of the said person (beneficiary) along with with certain conditions that are mentioned in this commitment and along with a mortgage to guarantee the documents related to the imported goods (Al-Baroudi, Beita, p. 376).

3. Some others in the law believe that a letter of credit is a legal possession by which the bank creating the credit undertakes to pay a third party called the beneficiary an amount of money according to the instructions set by the ordering party or undertakes to pay the amount To fulfill the bills or promissory notes that the beneficiary withdraws, or to accept it, or to circulate it directly, or to remit it to another bank for this purpose, against certain documents that comply with the terms and conditions agreed in advance (Diab , 1999, p. 13).

4. In another definition, it is stated as follows: "It means the credit that the bank opens for another person according to the request of a person called the customer, regardless of whether the method of implementation is acceptance of promissory notes or payment of the amount from the customer related to this order which is guaranteed by the mortgage of documents that are the goods being sent or ready to be sent (Awad, 1993, p. 14).

The Iraqi Commercial Law No. 30 of 1984 in paragraph 1 of Article 273 defines the documentary credit (al-Itimad al-Dakari) as follows: "The documentary credit is a contract by which the bank undertakes to open credit for the beneficiary according to the request of the order along with the guarantee of the documents consisting of goods transferred or being transferred". Here we see that the Iraqi law has emphasized the relationship between the bank and the bank's customer, i.e. the customer in the first degree and his relationship with the beneficiary in the second degree. Also, it is clear from this article that the credit is actually considered a contract which the bank based on The customer's request opens for the benefit of another individual (beneficiary) against the guarantee of the documents that are the goods transferred or prepared for transfer.

The Iraqi judicial system also agreed with what the legislator mentioned in the decision of the Supreme Court No. 27 / Madani / dated 1/21/2020 and gave the following decision: the payment is through a letter of credit and the bank is responsible for the credit amount and the claimant He must go to the bank to receive the said amount, because he has agreed with the defendant that the payment should be through a letter of credit and not directly.

In Iran, until 1976, only some of the country's banks had joined the uniform regulations of letters of credit individually, but after that, the Supreme Council of Banks approved regulations for the collective accession of all Iranian banks, which Officially announced to the Chamber of Commerce. Regarding the current regulations of the Supreme Council of Banks, it was approved on the date of october 1984, which coincided with the date of the last revision until then, i.e. October 1, 1984, and all domestic banks were informed that the compliance and implementation of the uniform provisions of the Credit Law Documents from the mentioned date are required (Solatifar and Hosseini Sadrabadi, 2015, p. 115). After that, the entry and exit of goods in Iran was mainly done through the opening of letters of credit, which had less cost and risk, which indicates its use in FOB and CIF as two important methods of international merchants. But after the imposition of Western sanctions, the opening of credit was completely rejected and they faced many challenges in the matter of importing goods in such a way that the goods were imported either through smuggling or remittance, which imposed a very high cost and risk on the traders. But after the implementation of the JCPOA, the problems were resolved and the first message from the Central Bank Operations Department was sent to one of the Austrian banks, and other banks from other countries, such as Hamburg Bank, announced their support. Following the JCPOA, it was announced that the JCPOA is willing to open credit for Iran in the amount of 100 million euros, and Muscat Bank of Oman also stated in this regard that it is even ready to accept facilities in the credit opening department before depositing the funds. On this basis, the government proposed a bill that states in the sixth development plan in paragraph 4 of note 4 that: "The use of foreign financial facilities by the executive bodies of letters of credit is allowed and the rest of the third, fourth and fifth development plans with Islamic rules of The sentence of the approval of the assembly of the expediency of the system remains in force" (Solatifar and Hosseini Sadrabadi, 2015, pp. 119-120).

In Iranian law, some have compared it with specific contracts such as authorization contracts such as remittance agency and guarantee contract, and others have compared it with partnership contracts such as Jaala contract and Mudaraba contract. But recently, they considered the credit opening contract, which according to the directives of the internal letter of credit - Iranian rials, in the form of one of the Murabaha and Istisnaa or Jaala contracts, means the letter of credit contract in its special sense. Although it seems to be criticized. In the general sense, the letter of credit consists of three relationships. 1- The legal relationship between the applicant and the beneficiary, which is related to the basic relationship. 2-

The legal relationship between the applicant and the credit opening bank, which is known as the credit opening contract. 3- The legal relationship between the opening bank and the beneficiary of the letter of credit, which is considered in a special sense. The instructions of internal documentary credit - Riyal approved by the Council of Money and Credit in 2014 have announced Murabaha Jaala and Istisnaa contracts as opening credit contracts (Groui, 2017, pp. 5-4).

With these definitions and background, it can be said that from the time the contract is concluded between the buyer and the seller to the time it is received by the buyer, a period of time passes, and during this time, in international trade, it is not economically beneficial for the buyer to pay the price of the goods but not have them in his possession. In the large volume of exchanges where huge sums are moved and cash sales are not cost-effective while reducing the possibility of sales (Eftadeh, 1997, p. 70). Therefore, this issue is also raised in FOB and CIF exchanges, and letters of credit are one of the ways to solve this problem merchants have given special help.

In the FOB method, the payment is by letter of credit in such a way that the buyer requests a letter of credit from the issuing bank for his account. In this case, the seller guarantees the transaction through the issuing bank. The issuing bank deposits the transaction amount to the seller's account after receiving the documents related to the transportation of the goods and ensuring their accuracy. Finally, the documents related to the transportation of the goods are delivered to the buyer and he can receive the goods based on them.

In the CIF method, at first the buyer requests a letter of credit from the issuing bank for his account. The seller also receives the transaction amount from the bank by presenting the relevant documents to the issuing bank. After submitting the documents, the issuing bank makes the payment to the seller. In other words, the payment is made as soon as the documents are presented, and the buyer can receive the goods through the payment order of the issuing bank.

In both FOB and CIF methods, letter of credit is used as a financial instrument to guarantee payment in international transactions and is recognized in the laws of both Iran and Iraq. These methods provide the possibility to ensure the accuracy and completeness of the goods transportation documents and minimize the risk of incomplete payment or non-delivery of the goods.

In the FOB contract, the buyer assumes the responsibility of transporting and loading the goods. In this case, the use of letter of credit can be done as follows:

Agreement on payment terms: In the FOB contract, the parties (buyer and seller) can determine the terms of payment. These terms include the amount of the letter of credit, the due date, the letter of credit and other payment details.

Delivery of documents: After loading the goods and issuing relevant documents (such as bill of lading and invoice with export declaration), the seller delivers the documents to his bank. These documents include shipping documents and documents related to the loading and delivery of goods.

Sending documents: The seller's bank sends the documents to the buyer's bank. By checking and verifying the authenticity of the documents, the buyer's bank makes sure that the goods are loaded correctly.

Payment: After verifying the authenticity of the documents, the buyer's bank pays the equivalent amount to the seller's bank. At this stage, the buyer's bank can use the letter of credit and pay the equivalent amount to the seller's bank.

Settlement: After receiving the payment, the seller's bank is responsible for paying the amount to the seller. Account settlement is done between the respective banks.

In the CIF contract, the seller is also obliged to cover the cost of product insurance. In using letter of credit in this type of contract, there are similar steps to the FOB contract. Of course, the difference in issuing a CIF contract is that the seller must also cover the cost of product insurance. In using letter of credit in this type of contract, there are similar steps to the FOB contract. Of course, the main difference in the CIF contract is in the issue of insurance.

Agreement on the terms of payment: the terms of payment in the CIF contract can also be determined between the parties and can include the amount of the letter of credit, the due date, the letter of credit and other details related to the payment.

Delivery of documents: After loading the goods, the seller delivers the shipping documents and relevant documents to his bank. Here, insurance documents are also provided as documents.

Sending documents: The seller's bank sends the documents to the buyer's bank. By checking and verifying the authenticity of the documents, the buyer's bank ensures that the goods are properly loaded and insured.

Payment: After verifying the authenticity of the documents, the buyer's bank pays the equivalent amount to the seller's bank. At this stage, the buyer's bank can use the letter of credit and pay the equivalent amount to the seller's bank.

Settlement: After receiving the payment, the seller's bank is responsible for paying the amount to the seller. Settlement is done between the respective banks.

In both FOB and CIF contracts, the use of a letter of credit allows the seller to receive payment from the buyer, while the buyer can use the received documents for delivery and settlement. This method gives the seller more confidence about the payment of the goods and allows the buyer to be sure of receiving the goods and related documents.

B: Pillars of Letter of Credit

1- Credit Opening Requester (Buyer)

According to Article 2 of the Uniform Rules and Regulations of Documentary Credits (UCP600): "Applicant: means the party whose credit is opened at his request".

It is a natural or legal person who submits his request to the bank regarding the letter of credit, which is referred to as "customer". which is usually the buyer, i.e. the party to whom the bank opens the letter of credit, because he is the person who submits the request for the opening of the credit to the bank, and the same person takes the amount of the payments made under the title of the letter of credit to the bank. because the purpose of opening a credit agreement is to deliver a sum of money as an exchange for the price of goods to the seller, who is usually located in another country, so the opening of a letter of credit is done with the aim of fulfilling the obligations of the credit orderer, who is the buyer in the sales contract. To be fulfilled means that in this way the buyer fulfills his obligation towards the seller (beneficiary).

In Erga law, the applicant for opening a letter of credit has the following obligations:

1-1) Obligation to refund the amount paid by the bank to the beneficiary (seller) as the price of the goods. That is, the applicant for opening a letter of credit is required to return this amount to the bank because the bank has already paid it.

1-2) The person who ordered the opening of the credit[1] undertakes to return to the bank, in addition to the amounts paid by the bank, the expenses that the bank has made in line with the letter of credit.

1-3) The applicant for opening a letter of credit is obliged to pay the fee (commission) assigned to the bank, which is due to the bank for opening the letter of credit and placing the amount in the possession of the beneficiary, even if the beneficiary has not used it, provided that This lack of use should not be related to the bank's fault (Abdul Mutallib, 2000, p. 249).

In Iranian law, in the first stage after the negotiations between the parties that led to an agreement, the initial stage of the buyer's entry into the banking system begins. The buyer may be a natural person or a legal entity who, after obtaining a performance certificate to register his order through registration, is a merchant. Iranians should go to the website of the Ministry of Commerce of the Islamic Republic of Iran and complete and send their order through the website. Further, after completing the initial steps and form, the buyer goes to his bank branch and receives the approval to introduce the currency unit. The bank can agree to receive the initial advance payment according to the knowledge it has about its customer. If the customer has strong collateral and proper qualifications, the bank can agree to ten percent at the time of opening the credit, but if the customer has opened an account for the first time or his account does not have high transactions, the bank can Increase the amount of advance payment according to the mentioned conditions.

As it was said in FOB, the buyer is the one who has concluded the contract of transportation and insurance of the goods, of course, there is no obstacle for the seller to do these things, but as a lawyer on behalf of the buyer and not as an obligation that he is bound to. Here it is necessary for the seller to provide the power of attorney along with the necessary documents to receive the amount of credit opened in his favor.

2- Bank Opening Letter of Credit

A letter of credit issuing bank can be defined according to the following obligations:

2-1) Before anything, the bank is required to open credit for the benefit of the specified beneficiary on behalf of the customer, along with the terms agreed in the documentary credit agreement in terms of credit value, duration and method of execution and other details.

2-2) Beneficiary notification about the opening of a letter of credit in his favor through a direct way, which is called a letter of credit or letter of credit, or through a bank that is usually located in the beneficiary country and is referred to as the issuing bank. .

2-3) Keeping the letter of credit open during the credit period unless there is an agreement to the contrary or the credit can be violated.

2-4) Receiving the documents requested from the beneficiary and checking them to ensure their compliance with the credit conditions.

[1] Opening of credit (LC): To receive a document issued by the bank, based on which it is committed to pay a certain amount to the buyer or seller, provided that the buyer or exporter has certain terms and conditions, the opening of credit (LC Opening or Letter) of credit opening) they say.
To put it more simply, opening credit in a financial system like a bank means receiving a letter of credit to carry out a project. In this method, the buyer's bank commits to pay the seller for the goods in exchange for receiving specific and pre-announced documents.
In this method, the seller is sure that he will get his money if he prepares the goods and sends the documents to the bank, and also the buyer is sure that the seller will not be paid until the goods are produced and sent according to the agreement.

This matter is mentioned in Article 279 of the Iraqi Commercial Law as follows: "It is necessary for the bank to ensure the compliance of the documents with the instructions of the ordering party for the opening of the letter of credit". Also, in Article 247, the legislator obliges the bank to comply with the documents and has stated as follows: "The credit opening bank is required to implement the terms of fulfillment and acceptance and deduction agreed in the credit contract, provided that the documents match the data and conditions. mentioned to match".

2-5) Payment of the amount of credit granted to the beneficiary if the documentation is complete and it complies with the credit conditions, which is referred to in the first paragraph of Article 277 and Article 276 of the Iraqi Commercial Law.

6-2) Rejecting the documents and returning them to the beneficiary in case of apparent non-compliance with the credit terms and informing the credit opener within the necessary period for returning the documents and informing.

2-7) Delivering the documents according to the terms of the credit to the credit orderer, in case of payment of the amount due to the beneficiary. In order for the customer to be able to review and declare his position about them and declare his non-objection and receive the desired goods (Abdul Mutallib, 2000, p. 249).

According to Article 14 of the third chapter of Iran's domestic letter of credit directive, "If the opening bank only intends to provide service to the applicant in the form of opening a domestic letter of credit, it can conclude a domestic letter of credit contract with the applicant regardless of the issue of credit. The financing form of the applicant is not possible in any of the domestic letter of credit stages. In case of non-fulfillment of obligations by the applicant, the issuing bank is not authorized to pay the amount of the domestic letter of credit from the source of representation and can, if included in the contract, as a condition included in the contract. In addition to receiving the amount of the domestic letter of credit, demand from the applicant a payment for the late payment of the debt based on the interest rate of non-participatory contracts, plus the percentages prescribed in the debt collection regulations, in proportion to the amount and duration of the delay.

Also, according to Article 15 of the directive, "in cases where the opening bank intends to finance the applicant based on the applicant's request, it is obliged to use one of the Murabaha and Istisnaa contracts, as the case may be, if the issue of internal document credit is the existing goods or services at the time of opening between the issuing bank and the applicant, a Murabaha contract, and if the subject of the internal letter of credit is a product that did not exist at the time of opening the internal letter of credit and requires its creation in the future, it will be concluded between the issuing bank and the applicant, an Istisnaa contract" and according to the note of the said article, if A Murabaha contract should be concluded, whereby the opening bank informs the applicant of the total price of the goods or services based on the proforma invoice issued by the beneficiary, and by adding an additional amount or percentage as interest, it will be paid in cash, installments or installments and Assigns equal or unequal installments to the applicant at the due date or certain receipts. However, if the credit is based on the Istisnaa contract, in this case, between the opening bank and the applicant, the opening bank undertakes to deliver the desired goods to the applicant in a certain period of time in return for receiving the contract amount and according to the conditions stated therein. As you can see in the previous statements, there is no compatibility in the proposed method with the uniform regulations of UCP letters of credit, such as in the opening of internal letters of credit by accepting contracts such as Murabahah Jaala Istisnaa, the nature of letters of credit is changed and the bank enters the transaction and the party to the contract is and the bank's obligation to pay has been deferred to fulfill the obligations of the beneficiary or the seller, which is not in accordance with the provisions of UCP (Groui, 2017, pp. 5-6).

It should be noted that the issue in the issue of documentary credit is the transaction of documents and only the basic or main contract has nothing to do with the bank, and the bank, as the main obligee,

must supervise the implementation of the obligations of the credit, that is, against the documents that comply with the terms of the credit. and pay the amount according to the terms of the credit (Solatifar and Hosseini Sadrabadi, 2015, pp. 115-116).

The main contract concluded between the parties of the transaction is independent and separate from the bank that is obliged to pay the credit amount. The bank is obliged to pay the amount to the beneficiary regardless of the contractual issues and problems between the parties of the letter of credit, unless any fraud or untrue conditions are proven. As in the uniform provisions of letters of credit, it clearly refers to the mentioned principle. In Article 4, it is stated that "credit, by its nature, is a transaction separate from the sales contract or other contracts that are the basis for opening credit." Contracts based on credit have nothing to do with the bank and do not create an obligation for them, even if there is any mention of such contracts in the credit. The issue of validity, as is evident in this article, can be investigated in two general and special senses.

A letter of credit contract is independent and separate from other contracts between the parties, such as a contract of sale, insurance, transportation, inspection, and the like. Accordingly, in order to speed up the letter of credit operation and clarify the rights and obligations of the parties, it is obligatory that legal issues Related to this new banking procedure, it should be separate from other contractual relationships between the parties with other people, so that in case of any problem, the legal courts can make a decision quickly.

The credit opening bank is obliged to check the documents presented to him very carefully. If the documents presented by the beneficiary appear to be in accordance with the terms of the credit, the bank is obliged to accept it and must implement the obligations arising from it, and it cannot make a separate condition for it or provide its own interpretation of the appearance of the documents. On the other hand, if the documents provided by the beneficiary are not in accordance with the terms of the credit, even if the bank approves the request to fulfill the obligations arising from the basic contract, but the documents provided by the beneficiary are not in accordance with the terms of the credit in terms of value, the bank is obliged who does not accept the documents and is not obliged to fulfill obligations. Accordingly, the bank that has paid the credit based on non-conforming documents must accept the commercial risk of the transaction, because there is a possibility that the person applying for the credit did not accept the non-conforming documents and refused to pay the credit amount to the bank. In this relationship, the paying bank is the special representative of the credit issuing bank, and the opening bank is considered the special representative of the person applying for credit, and the final responsibility for payment rests with the applicant.

According to Article 14 of the Uniform Regulations of Documentary Credits, "the broker bank or the designated confirming bank, if any, as well as the issuing bank, must examine the documents provided and determine whether the documents provided are in accordance with the terms of the credit, based solely on the appearance of the documents. Do they agree or not? Also, in paragraph b of the aforementioned article, "the broker bank or the designated confirming bank, if any, as well as the opening bank, each have the opportunity for a maximum of 5 banking days after the day of the submission of the documents to determine that the documents submitted are in accordance with the credit conditions. Is. This period will not be extended or affected by the daily events of the documents or the day after that and the day of expiry of the credit or the last day of submission of the documents. Also, in the clause of the article, it is stated that "in documents other than the commercial black, the description of goods, services or performance, if included, can be stated in a general manner in a way that does not contradict their description in validity". Based on this, if the base bank makes the appearance of the documents in accordance with its compliance, it has fulfilled its duty, considering the nature of the letter of credit contracts, which are centered on the documents, adopting the word appearance does not refer only to the document, and the texts and phrases that are generally It also includes those included in the registration of documents (Kashanizadeh, 2008, pp. 319-320; Shahbazinia and Al-Halloui Zare, 2010, pp. 149-151).

In general, similar to Iran's laws, in Iraq's laws, the issuing bank is obliged to review the documents and ensure their compliance with the credit conditions, and the bank's performance in this case must be consistent with the relevant laws and regulations.

In Iranian banking law, there are many letters and instructions in the field of opening letters of credit, but legal and regulatory gaps and the neglected facilitation of import and export by the government have caused numerous abuses of letters of credit and increased the demands of banks. One of the important reasons for this is the lack of proper infrastructure, such as the lack of sources of credit information that can provide accurate and up-to-date information to banks. Also, the lack of financial consulting, investment and insurance institutions that guarantee these loans has increased the risk of banks and the process of recovering facilities and loans has become a problem, so we are witnessing a heavy amount of outstanding claims in this field (Sharifi Al Hashim and Vahidi , 2017, p. 97).

3- Beneficiary (Seller)

According to Article 2 of the Uniform Rules and Regulations of Documentary Credits (UCP600): "Beneficiary: means the party in whose favor the credit is opened".

In Iraqi law, the beneficiary is the person who benefits from the opening of credit and is usually the same seller or exporter in the original contract, and he must act according to the terms agreed with the customer (credit opening) and stated in the warranty. and the beneficiary mentioned in the letter of credit is the only one who has the right to apply it, and without a doubt, the credit of the beneficiary is very important, not only as a seller, but also as an obligee to provide documentation that replaces the goods, and until the bank receives these documents will not be required to pay the amount. If the bank makes a payment in whole or in part against incomplete documentation or if it does not correspond to the agreed reality, the customer will suffer damage, but according to the agreement of the customer and the beneficiary, the bank will not be responsible for it, and if the bank did not play a role or cause it. If not, the customer will be responsible for it (Al-Ashmawi, 1984, p. 41).

According to paragraph d of Article 38 of the UCP 600 regulations, it is also stated regarding multiple beneficiaries: "The credit can be transferred to more than one second beneficiary, provided that carrying or gradually withdrawing the credit is allowed. The transferred credit cannot be transferred to subsequent beneficiaries at the request of the second beneficiary. The first beneficiary is not considered as a subsequent beneficiary.

In some cases, the credit opener has a complete relationship with the beneficiary and with the complicity or registration of a fake company outside of Iran and impersonating it as a seller, they have bought and sent low-quality goods in Iran. In some cases, the seller presented the contents of fake documents and the bank made payments to the seller based on the documents. Iran's laws emphasize the fact that the product itself is collateral as a guarantee of credit, which has created a disturbance in the process of documentary credit, so that the seller imports low-quality or fake goods, this has caused foreign exchange to leave Iran, so that after From opening a credit card and receiving an unsupported amount from an Iranian bank abroad, the money received is re-entered the country to be spent on something else. But what prevails in the international environment is good faith and trust between businessmen in the matter of international buying and selling, so this is not foreseen in the provisions of the UCP to which Iran is committed. Therefore, in this regard, regulatory bodies such as the Central Bank and the Ministry of Economy and Finance should establish regulations to prevent the opening of such credit and the roles of the seller and buyer are not formal (Sharifi Al Hashem and Vahedi, 2017, p. 98).

4- Amount of Letter of Credit

The credit amount is one of the rights related to the beneficiary, which is awarded to him as soon as he submits the requested documents after ensuring their accuracy, in such a way that the amount of the

promissory note issued to the customer is awarded to the beneficiary. And this amount is the price of the goods in FOB mode and the price along with the loading fee and insurance premium is in CIF.

Whenever there is an agreement between the seller and the buyer regarding the amount of credit, it will be necessary that the amount mentioned in the commercial list is equivalent to the total amount mentioned in the letter of credit, unless there is a text to the contrary (Ghanim, 1998, p. 61).

In Iraqi law, banking custom has been based on the fact that banks keep a guarantee that shows the difference between the credit amount and the value of the goods, because there may be changes in the value of the goods as a result of transportation or its increase. Therefore, banks try to check the value of credit in such a way that it is fixed in writing and numerically and is not subject to increase or decrease (Alem al-Din, 1968, p. 189).

One of the things that has motivated the misuse of letters of credit in Iran is the import of worthless goods, which is caused by the difference in the special exchange rate of the central bank and the exchange rate of the open market, which seems to be in accordance with Iraqi law. It has received more attention. In this way, a person imports a worthless or defective product, and in return, by receiving foreign currency from the bank and re-entering Iran, they sell the government currency in the open market and earn money in this way. According to some experts, the stability of the exchange rate and the unification of the state and free currency can also help documentary credits (Sharifi Al Hashim and Vahedi, 2016, p. 98).

The bank must pay the agreed amount with the first request and cannot refuse to pay due to the reasons arising from the basic contract, therefore, objections such as invalidity of the basic contract, termination of the basic contract and its incomplete implementation, claims for clearing and transfer will not be valid. Was. It seems that it is necessary for the bank to be able to involve itself in contractual relations to some extent or the courts can prevent the payment by entering into disputes and contractual relations before payment (Kashani, 1995, p. 171).

Prohibition of credit payments in countries such as the United States and England can only be made by proving fraud, and it is not acceptable outside of this issue. But in Iranian law, according to the procedural rules, if there are special conditions, the judge has the duty to act on the temporary order, and the same issue regarding credits, a temporary order forbidding payment is easily issued, but in legal systems that have special conditions and business rules They observe international law and observe special conditions between domestic laws and international trade, they act outside the general rules of procedure, because the necessity of international trade requires such a distinction (Chaharbaghi, 2014, p. 82). The rules of domestic law in Iran allocate some of the international rules, which among these rules lead to the unjust acquisition and abuse of rights (Sultani, 2006, p. 166; Mohebi, 2004, p. 245).

In the laws of other countries, it is emphasized that the court does not intervene in the matter of guarantees and letters of credit, and if there is even a problem, it is postponed until after the payment, because in this method, a CIF margin is created for the beneficiary. Domestic jurists do not agree with this opinion, and if in Iran's judicial practice, following the doctrine of the principle of independence, they do not consider the concept of not paying attention to objections, but by changing the position of the claimant and the claimant against the person applying for credits as the claimant to prove the non-violation of the obligation and or introduce the existence of other defects (Chaharbaghi, 2014, p. 86).

In the International Procedures of Guaranteed Letter of Credit (ISP 98) in paragraph A, it is stated that: "Letter of credit is an irrevocable independent documentary obligation. Without mentioning it in the letter of credit. It is also stated in paragraph D of the same rule that: "Due to the documentary character of the letter of credit, the issuer's obligation to pay is limited only to the presentation of the prescribed documents and the appearance of these documents." Guaranteed letters of credit have gone so far as to state in its rule 4008 that: "even if no document is specified in the letter of credit, it is assumed that the

payment of the amount of credit is subject to the submission of a written request or documentary demand". Apart from this payment, instead of merely providing documents, Article 5 of the Uniform Commercial Code of the United States (UCC) is provided for. As stated: "The opener will pay the amount of credit against documents that, based on their appearance, are exactly in accordance with the terms and conditions of the letter of credit. The opener will not pay the credit amount against documents that are not as described. As stated, in the meantime, the banks are only obliged to check whether the documents presented to them comply with the terms and conditions of the letter of credit according to their appearance or not, which is known as the principle of exact conformity of documents in the law of letters of credit. (Kashanizadeh, 2008, pp. 319-320; Solatifar and Hosseini Sadrabadi, 2015, p. 119).

In Iran's banking law, banks do not do enough research when applying for a credit card. It seems that it is possible to inspect the goods at the source in FOB and CIF, in such a way that an impartial expert examines the goods at the source and delivers the desired documents to the credit opening bank, and according to some, the bank should match the inspection report and the documents. given and then deposit the money to the beneficiary's account (Sharifi Al Hashem and Vahedi, 2017, p. 99).

Second Paragraph: Marine Insurance Contract

In this speech, we will talk about the marine insurance contract and we will examine it in the laws of Iran and Iraq with regard to the terms CIF and FOB.

A: The Concept of Insurance in the Laws of Iraq and Iran

It is said that security in Arabic lexicography is derived from security and against fear (Abdul Doud, 1976, p. 5). In Arabic literature, Al-Mu'min is called an insurer, and Al-Mu'min Leh does not have an exact Persian equivalent as far as we have checked. Although it is usually translated as the insured person, however, it should be said that the insured person is equivalent to Al-Mu'min Leh, but in principle, it is not an accurate translation. Because in Arabic law, a "believer" is a person who has the insured risk, who is not necessarily the applicant for insurance or the insured and the payer of insurance premiums. Insurer in Farsi is equivalent to insurance applicant in Arabic, not Al-Mu'min Leh. Only in cases where there is no possibility of this confusion and the insured and the insured are the same person, the equivalent of insured is used in the translation of insured.

Insurance in Farsi also means assurance and guarantee or preservation and maintenance against risks that are feared to occur and in legal terms it is the sharing of damage caused by an unspecified, accidental or certain incident for a person or persons or property and Things that are entrusted to a non-affected person or persons (Yahyaei, 2021, pp. 777-778) or "Insurance is the protection of property and life against any risk for a certain period of time in exchange for paying a certain amount." (Shamim, 2000, p. 10).

The Iraqi legislator has defined insurance in paragraph 1 of Article 983 of the Civil Code of Iraq No. 40 of 1951 as follows: "It is a contract by which the insurer commits to the policyholder or the beneficiary a sum of money or a monthly payment or any other financial exchange. to pay where an accident has occurred in the subject of insurance and this payment is against the installments or any financial payment that the insured has paid to the insurer.

In Iranian law, insurance is an operation through which the insurer undertakes to pay an amount called insurance premium or participation share to the other party, who is also called the insured or the relevant beneficiary, against receiving an amount called insurance premium or participation share to pay in the form of capital or annuity" (Hayati, 2000, p. 68) or "Insurance is a practice by which one party, who is the insurer, in exchange for receiving an amount as an insurance premium, undertakes to cover the damage of the other party, the policyholder, at the time of occurrence pay a certain risk." (Kirimi, 2012, p. 37).

Also, according to another definition, "insurance is a practice by which a person as an insurer, in exchange for receiving compensation in the name of insurance premium or subscription, and according to special laws and tariffs, compensates for a number of accidents that cause damage, such as earthquakes, fires, etc. .., so that the compensation in case of an accident and its payment to the policyholder is equivalent to the damage caused. (Jaafari Langroudi, 2008, p. 132).

Article 1 of Iran's Insurance Law also states that "Insurance is a contract through which one party undertakes to pay a sum or sums from the other party in case of an accident, to compensate him for the damage or to pay a certain amount to The person who undertakes to be the insurer of the other party is called the insured, and the amount paid by the insured to the insurer is called the insurance premium, and what is insured is called the subject of insurance.

Various definitions for marine insurance are also provided in law. Some have defined marine insurance in law as follows: "It is a contract according to which a person with the title of insurer compensates another person with the title of insured (Al-Momon Leh) for the loss caused to him. which includes real damage caused to the value of the object. And this compensation is against the installment that is paid by the policyholder within certain limits; which is not allowed to exceed the value of the lost goods" (Al-Sharqawi, 1966, p. 2). As can be seen, there is no mention of the element of risk in this definition (Aziz, 2004 p. 5), while this element is very important in the marine insurance contract because the nature of the risk that causes loss differentiates marine insurance from other insurances. It is terrestrial (non-marine). Others have said the following in the definition of marine insurance: "It is a contract between the insurer and the policyholder whereby the first party undertakes to cover the losses caused by marine risks or other specified risks to the second party or the beneficiary or any person who has an interest In the meantime, he has to pay and this payment is against the obligation of the second party to pay the installment" (Qastu, 1967, p. 78), this definition, unlike the first definition, refers to the losses caused to the ship or goods as a result of maritime or other risks. The specified risks are mentioned in the marine insurance contract.

Also, in the definition of marine insurance, they said: "It is a contract according to which the insurer commits to the policyholder - in the agreed method and in the agreed amount - to compensate for marine damage that may occur during sea transportation" (Abdullah and Omar, 1981, p. 16). The problem with the mentioned definition is that it does not mention the element of risk and does not include all the elements of the marine insurance contract.

Insurance is considered one of the most important contracts because the purpose of this contract is to bear the consequences of a risk that cannot be realized, so we see that it is not possible to design and review this contract in the commercial law. Because the Iraqi legislator has considered insurance as a part of commercial activities in paragraph 5, article 14 of the Commercial Law No. 30 of 1984, but in fact insurance is one of the specific and named contracts because its special provisions have been formulated and organized in the Iraqi Civil Code.

The Iraqi legislator defined marine insurance in Article 175 of the Marine Trade Law (Ottoman origin, which is still implemented) as follows: "It is a marine contract that includes the obligation to provide a full guarantee in terms of compensation in respect of which the owner of the insurance (The policyholder) receives it for injuries and losses that may occur as a result of a marine accident (to the objects that seek to protect them from the dangers of sea travel). As can be seen, the Iraqi legislator has applied the concept of contracting to marine insurance, which includes the insurer's commitment that in case of marine damage, this commitment will be effective, but there is no mention of the policyholder's obligations towards the insurer.

Regarding the definition of marine insurance for the transportation of goods, no definition was found in the law of Iran. Unfortunately, there is no article in Iran's insurance law dedicated to this issue. This is despite the fact that in Iraqi law, the Iraqi legislator has defined marine insurance. One of the

definitions of marine insurance by jurists is as follows: "Marine insurance is an act in which one party to the contract accepts an obligation for his benefit or for the benefit of a third party by receiving an insurance premium from the other party, which is performed in the event of the realization of the insured risk." is taken on the condition that the said risk occurs due to or on the occasion of shipping and maritime transport. (Kirimi, 2001, p. 332). The basis for the regulation of marine insurance issuance in many countries of the world, including Iran, is the transport insurance regulations set by the London Insurers Institute, which was set in 1983 (Hosni, 2010, p. 76).

In international trade, cargo insurance is related to marine transportation insurance, because the transportation of goods is generally carried out by sea, and due to the age of marine insurance, the procedures included in it have been approved in other transportation insurances as well. It is done (Shiravi, 2014, p. 371).

An insurance contract is a contract through which the insurer undertakes to compensate for the damage caused to him or undertakes to pay a specified amount in exchange for the payment of money by the insured in the event of an accident causing damage. In practice, the insured person is obliged to enter the information required for the insurance in the forms provided by the insurer, and after that the insurer is obliged to issue the insurance policy based on the information entered in the forms. An insurance policy is a written document that is issued at the request of the policyholder and by the insurer, and the time of concluding the insurance contract is the moment when the policy is issued (Kashuri, 2000, p. 141).

Standardization accepted by Lloyd's member insurers and referred to in insurance policies. According to these uniform regulations, transportation insurance conditions are divided into three categories A B C.

Group C: The lowest type of insurance coverage for the transportation of goods is in this group.

Group B: Insurance coverage in this group is more than group C and covers more risks.

Group A: It is the most complete type of transportation insurance that generally covers all risks (Shiravi, 2014, pp. 381-382).

The International Chamber of Commerce is trying to help clarify the obligations and conditions faced by traders by dividing the costs, responsibilities and risks faced by traders with a term plan called Incoterms. Also, Incoterms has been able to solve three major problems related to international trade. They are 1- delivery of goods, 2- transfer of exchange guarantee, 3- distribution of costs and preparation of documents related to transit. In each of the terms of Incoterms, the way of insurance is stated, which specifies whether the obligation is on the shoulders of the buyer or the seller. Based on this, he expressed them in the form of several standard terms, which are divided into two groups. The first group is related to any type of transportation. And the second group is specific to sea transportation and inland waterways. The point that is important in this collection of terms is that the buyer practically has no obligation to insure the goods, but in the two rules of ICP and TIC, exceptionally, the seller has no obligation to insure the goods (Kashuri, 2017, p. 143).

As mentioned earlier, in FOB conditions, the buyer is responsible for the insurance of goods transportation. In other words, after loading the goods on the shipping fleet at the port of origin, the buyer assumes the responsibility for the insurance of the goods. As a result, the buyer must prepare a suitable insurance policy for the transportation of the goods and pay for it. Therefore, the insurance contract is important in this term. But in CIF conditions, the seller is responsible for the insurance of goods transportation. In this case, the seller must prepare the appropriate transport insurance policy and pay for it. Therefore, the buyer does not need to prepare a separate insurance policy and the cost of insurance is included in the price of the product. It is important that the parties know exactly about the terms of

insurance and the division of responsibilities and specify these issues explicitly in their purchase and sale agreement.

In both FOB and CIF conditions, the parties can decide to prepare the transport insurance policy themselves and pay for it separately. Also, in certain cases, conditions other than FOB and CIF may be used, in which the division of costs and responsibilities between the seller and the buyer is different.

B: The Parties to the Marine Insurance Contract

The parties to the marine insurance contract are the insurer and the policyholder, but in some cases the policyholder is other than the person who executes the contract, or the insurance rights go to someone other than the policyholder, or to a person who is usually the beneficiary. They are called the beneficiary) and sometimes the concept of the insurer is different according to the form of the insurance company that provides insurance, so it is necessary to explain the meaning of the insurer (Al-Mu'min), the insured and the beneficiary (Al-Mustafid).

1- Insurer (Al-Mu'min)

The insurer is the counterparty of the insured in the insurance contract. Usually, the insurer is a joint-stock company (legal entity) and a technical company. Sometimes it is in the form of a group of people who act alternately, that is, they agree to cover the resulting loss if a certain risk occurs to one of them. Usually, the insurer is the direct party in the contract, but sometimes the insurance contract is concluded through lawyers or intermediaries, in such cases, the lawyer is the insurer and the insurance is assigned to him in exchange for a specific commission. And sometimes it changes according to the rules of transfer of rights and transfer of the insurer's debt after the transfer of the works of the contract to another person. And the other party will be considered as the new insurer against the insured from the date of transfer. And sometimes the insurer changes as a result of merger, for example, two insurance companies may merge. that these changes do not change the rights of the policyholder and his obligations except where he wishes to terminate the contract.

The Iraqi Civil Code or other laws compiled for insurance in Iraqi law have not provided a definition for an insurer, but the desired definition can be derived from the opposite concept of Article 983 of the Iraqi Civil Code. In this article, it is stipulated as follows: "Insurer (al-Mu'min) is a person who has received the insurance premium and is obligated to pay insurance to the insured in case of risk realization". This definition is actually an incomplete definition because it does not clarify the economic and technical duty of the insurer and since this duty is considered a distinct element for the insurer, therefore this definition can be completed as follows: "Insurer is a person who has economic power and has the necessary financial sufficiency to bear the consequences of the risk and eliminate them in case of its realization - in accordance with the terms of the legal contract. In paragraph 2 of Article 983 of the Civil Code of Iraq, regarding the insurer (Al-Mu'min Leh), it is stipulated as follows: "He is a person who bears mutual obligations towards the obligations of the insurer". And from this definition we can derive the definition we mentioned about the insurer.

At present, marine insurance is undertaken by special companies (Al-Kilani, 1999, p. 223), which is due to the huge costs incurred by the insured's property, including ships and goods in transit. Therefore, the insurer is in the form of a company because the company has the ability to collect a lot of property to bear the consequences of maritime risks (Al-Maqdadi, 2009, p. 252) and in the event of an accident or the realization of an obvious risk and the agreement in the contract, it can compensate for the damage incurred. (Kamal Taha, 2000, p. 42). Therefore, as mentioned, the marine insurance contract is either directly between the insurance company and the policyholder, or through the intermediary of the insurance company, the joint-stock companies have a license that are allowed to carry out insurance operations. As mentioned in paragraph 6: "Insurer is a company licensed to carry out insurance operations or to carry out reinsurance or reinsurance (reinsurance) operations according to the provisions of this

legislative decree". In the law of insurance companies, the Iraqi legislator has allowed to enter into a contract with foreign companies to establish what is called a joint-stock insurance company, and these companies are formed through foreign and domestic shares. In Article 3 of the second chapter of this law, it is stated as follows: "Establishment of insurance and reinsurance or reinsurance companies in the form of shares is permissible...". These companies - due to their importance and the development of the domestic economy as well as the huge assets that accumulate in the marine insurance market - are established according to domestic law.

In Iranian law, it is also said that the insurer provides adequate coverage to the insured person in return for receiving the insurance premium. Based on this, he must have the ability to submit the appropriate security to the policyholder, based on this, if he lacks this ability at the time of the performance of the obligation, the contract between the parties will be void due to the lack of power to submit the security to the insurer (Shahidi, 2008). , p. 51).

Based on Article 31 of the Central Insurance and Insurer Establishment Law approved in 1971, insurance operations in Iran are carried out through Iranian public stock companies, all of whose shares must be registered in compliance with this law and in accordance with the commercial law. to be

The insurer is obliged to clearly mention all its obligations both qualitatively and quantitatively, and also state the things that may be effective in paying damages in the event of an accident or accident. If any of the above is not stated, it will cause the security that must be paid as one of the substitutes to remain unknown, and as a result, the contract concluded between the parties will be invalidated due to the unknown of one of the substitutes (Kirimi, 1974, p. 77).

International sanctions that include Iran's maritime trade mostly focus on providing insurance to ship operators and Iranian oil carriers. In fact, marine insurance is mentioned as a factor of severe pressure against Iran, so many insurers refuse to provide insurance coverage to maritime trade with Iran, for example, in October 2009, the British Treasury banned trade with Iran's state-owned shipping company, and insurers English asked to cancel the issued insurance coverage. Alternative sources in Iran are also uncertain in terms of the ability to respond in case of damage and the level of available coverage. This refusal has also caused damage to the Iranian market, although some believe that the sanctions against Iran have led to the further development of the Iranian insurance market. Some countries, like India, have allowed Iranian oil ships to continue operating and have provided government insurance to Iran, but the limit of their commitment is not at a desirable level. Many of the companies that are insured by Iran's domestic clubs are in business dealings with East Asia, which are exempt from US sanctions, but in case of a problem, their ability to manage the accident is questionable. In the whole country of Iran, to bypass the sanctions, they use changing the name of the ships, replacing the flags of other countries and changing the ownership of the ships, etc.

In general, in CIF, the seller (insurer) is responsible for preparing the insurance policy for the transportation of goods and pays the insurance fee. In this case, the goods transport insurance policy is issued as a contract between the seller and the insurer. Also, in FOB and CIF, there is a difference in the responsibilities of the insurer and the insured:

In FOB, the insurer provides insurance coverage until the goods are loaded at the port of origin. After that, the responsibility of loading, transporting, and delivering the goods to the destination is the responsibility of the insured. In other words, the insurer takes responsibility for the damages that occurred during loading until the time of loading, but in case of damages during the transportation and delivery of the goods, the insurer is responsible for replacing the damages.

In CIF, the insurer is more responsible for the damages resulting from the transportation of goods. He provides insurance coverage until the goods are delivered to the destination. Therefore, in case of damage during the transportation of goods, the insurer is responsible for replacing the damage.

2- Insurer (Al-Momon Leh)

It is the party that threatens the risk of the insured, whether it is a financial risk such as loss insurance or a personal risk such as personal insurance, and the policyholder's duty is to pay the insurance premium. It should be noted that the insurance contract sometimes includes other persons besides the insured. Therefore, due to the fact that in the insurance contract and its implementation, there are persons who have interests, so it is necessary to distinguish between the applicant for insurance and the insured and the beneficiary. The insurance applicant is usually the same party who concludes the insurance contract and the insurer undertakes to pay the insurance installments. And the insured is a person who faces a financial or personal risk. But the beneficiary is the person to whom the insurance rights will be returned in case of realization of the insured risk. And sometimes these three traits are gathered in a single person. For example, a person insures his house against fire. Such a person is both an insurance applicant because he has concluded the insurance contract and has committed to mutual obligations, and he is a fiduciary because he is threatened by his own risk, and he is a beneficiary because in the event of a risk, the rights related to insurance occur. It will return to him (3) - But the problem may be the opposite and these attributes are assigned to many people. That is, it is permissible for the insurance applicant and trustee to be one person and the beneficiary to be another person. For example, where a person applies for life insurance for himself, he is the applicant for the insurance because he has entered into a contract with the insurer and is required to pay the insurance premium. (the risk is on him), but the beneficiary is another person to whom the insurance rights are transferred, who may be his family members or heirs. And sometimes he is the applicant of insurance and a personal beneficiary of the unit, and he is a trustee of another person. For example, where a person insures the life of his debtor for his own benefit. In this case, if the debtor dies before the settlement of his debt, the creditor will receive the insurance amount, so here the creditor is both the applicant for insurance and the beneficiary, but the debtor is the faithful believer because his life is the subject of the contract. And sometimes he is a trustee and a personal beneficiary of a unit and requests another personal insurance. For example, a person insures his liability for traffic accidents for the benefit of any person who is the driver of the car. Here, the driver is both a beneficiary and a believer. The driver is a believer because the insurance was concluded in the face of a risk that threatens him, and he is a beneficiary for the reason that the rights related to the insurance return to him, and in the end, it is possible that the applicant for the insurance, the believer, and the beneficiary of each be separate persons. For example, a person insures the life of another person for the benefit of a third person. Or someone insures his father's life in favor of his mother. Here, the first person is the applicant for insurance, the second person is Momin Leh, and the third person is the beneficiary (Al-Senhouri, 1998, p. 173).

In Iranian law, the policyholder is the party to the contract, and the contract is usually concluded in his favor, unless otherwise stated in the insurance policy. The insured may be a natural or legal person.

In fact, after buying insurance, the buyer is called the policyholder. In this discussion, we consider the policyholder to be a transport operator who insures his own responsibility against others. The carrier must have conditions in front of the insurance company that in case of non-existence of the said conditions or failure to perform the duties assigned to him according to the law, his insurance contract may be invalid or invalid. The conditions are like this. The insured must have an insurable interest. It means that the insured person must earn a profit by insuring the goods. Because if there is no profit, his move seems irrational and he has to pay insurance premium. So, as a result, it is analyzed that the insured or the beneficiary will benefit from the non-realization of the risk. Profitability in marine insurance is divided into two parts: product profitability and ship hull profitability. Anyone who is involved in the transportation through this medium and the survival of the property is a profit for him and its loss leads to a loss for him, such as the owner, mortgagor, custodian and the like, can secure the threatened benefits by concluding an insurance contract. preserve their possibility. The insurability of goods includes all kinds of benefits related to the transportation of goods. But the person who owns the ship also benefits from the profitability of the insurance of the ship's hull, and it includes cases where the owner of the ship is

responsible in front of others in terms of his ownership, and the person handling the shipment also has beneficial interests for the cargo entrusted to him. It is insurance, although the person in charge of transportation is not the owner of the goods, but he can insure his responsibilities against possible damages and other cases, but it should be noted that the only responsibility that is insurable for the ship owner in this regard in normal marine insurance policies is the responsibility caused by an accident. In fact, a condition is included in all insurance policies of the hull of the ship, due to which the liability caused by the collision is covered by insurance. However, other responsibilities such as death, bodily injury, rape, port attendants' rights and such cases are not insured in normal insurance policies, and generally ship owners insure these cases with the help of I&P loss and support associations.

The information provided by the insured person is very important. Because in an insurance contract, the risk is calculated based on it. It is on this basis that the correctness of the information provided regarding insurance is one of the most important examples for expressing good faith, which is considered one of the most basic conditions (Yahiai, 2021, pp. 781-782).

In FOB, the insured (buyer) is responsible for preparing the goods transportation insurance policy and must contact the relevant insurer and determine the insurance conditions. After loading the goods on the shipping fleet at the port of origin, the buyer assumes the responsibility of insuring the goods and must pay the insurance fee to the insurer.

3 - Beneficiary

In the event of the occurrence of the insured risk, the insured party is the oblige towards the insurer, who is often the beneficiary in the insurance contract, but sometimes the insurance rights may go to a person other than the insured person, who is referred to as the beneficiary in the insurance contract, so Beneficiary means any person other than the insured who has concluded the insurance contract. The beneficiary may be a natural or legal person, and there is no legal obstacle to the legal status of the beneficiary. The beneficiary is determined by the policyholder himself, which is explicitly specified in the insurance policy and at the time of signing the insurance contract. But sometimes the beneficiary is determined after the conclusion of the insurance contract. It should be noted that the right of the beneficiary is considered as one of the personal rights of the policyholder, as long as it is linked to with specific terms and is linked to his personality.

Research Results

Lack of awareness of customary regulations and commercial methods of other countries caused the common language created by Incoterms regulations and especially the two terms FOB and CIF to be welcomed by the governments and businessmen of the two countries of Iran and Iraq. In law, terms such as contract or sale are used for FOB and CIF, but these two are only commercial terms in international law.

Iraqi commercial law also defines CIF and FOB terms as sales, which is an important step in accordance with the concepts of international trade law, but in Iranian law, due to the lack of legal definition of these terms, combining these terms with other contracts such as sales, transport contracts And transfer and insurance are ambiguous, and the rules of these terms, such as risk transfer, are even in conflict with the concepts of Iranian civil law in some cases. But because of that, the rules of Incoterms are not considered as law and are considered as a kind of agreement. In Iranian law, according to Article 10 of the Civil Law and the acceptance of trading custom in Articles 224 and 225 of this law, two terms can be justified.

In using the terms FOB and CIF, the letter of credit payment system has been welcomed because this series of regulations has a high guarantee. Documentary credit is accepted as a contract in Iraqi law and is defined in Iraqi commercial law, contrary to Iranian law.

In FOB and CIF methods, the letter of credit is requested by the buyer and the seller guarantees the transaction by presenting the documents, and at the time specified in each term, the bank receives the documents and makes the payment to the seller, and the buyer also orders the issuing bank. , receives the goods, which minimizes the risk of incomplete payment or non-delivery of the goods in both methods, the letter of credit.

In Iran's banking law, efforts have been made to implement the UCP regulations regarding letters of credit. In this regard, a set of foreign exchange regulations have been compiled so that these regulations are adapted to Iran's internal laws and have been communicated to banks in the form of instructions. Although the use of letters of credit by executive bodies is allowed in the sixth development plan, but due to Iran's banking sanctions, the opening of credit faces many challenges because some countries refuse to cooperate in this field. Also, in Iranian law, the lack of sufficient research, the existence of weak monitoring systems and the interference of domestic law rules with international law have caused the judiciary to intervene in letters of credit that are not accepted in international trade and have also had an impact on the use of the terms FOB and CIF.

In general, letters of credit are recognized as an integral part of international trade law, but in the banking law of Iran and Iraq, due to the weak regulatory and legal structures, this has caused abuses. Therefore, according to the existing conditions in both countries, it is necessary for the legislators to Criminalizing and considering the guarantee of stronger executions and strengthening the guidelines and regulations related to validation by banks will help the economy of the two countries in using FOB and CIF.

Marine insurance contracts are also recognized in Iranian and Iraqi law, and marine insurance, unlike Iranian law, is defined by the Iraqi legislature. In FOB terms, insurance is the responsibility of the buyer and in CIF, it is the responsibility of the seller. The Iraqi legislator has allowed the establishment of joint-stock insurance companies by foreign companies, which will greatly contribute to the development of the country's domestic economy, but in Iranian law, insurance operations are carried out through Iranian joint-stock companies, and international sanctions on marine trade also target marine insurance. As many reputable foreign insurers refuse to provide insurance coverage to Iran's maritime trade, and limited countries such as India that provide some insurance to Iran do not have strong insurance coverage.

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