



## Comparative Study of Seller and Buyer Obligations in FOB and CIF Terms: An Examination of Iraqi and Iranian Law

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### **Abstract**

This descriptive-analytical study adopts a comparative approach to examine the civil and commercial laws of Iran and Iraq, as well as international trade practices. In FOB contracts, the seller is obligated to deliver the goods on board the ship, while the buyer is responsible for chartering the vessel and paying the shipping costs. In CIF contracts, the seller, in addition to delivering the goods, is also obligated to enter into a contract for the carriage and insurance of the goods. In both types of contracts, the buyer is obligated to pay the price and take delivery of the goods. The laws of Iran and Iraq have many similarities regarding the parties' obligations in these contracts. However, the Iraqi Commercial Law provides more details on these obligations. Despite the similarities in the laws of the two countries, there are differences in the details and implementation of the obligations. In cases where the contract or law is silent, international commercial customs will govern. The results indicate that the definition of delivery of goods in Iranian law does not fully correspond to the FOB concept, as it places greater emphasis on physical possession of the goods. In contrast, Iraqi regulations are more in line with FOB standards. In the context of cargo insurance under CIF terms, while both countries comply with CIF requirements, Iraq has set more detailed requirements for the amount of insurance, which may lead to more complexities. Regarding packaging, Iraqi laws cover this topic more precisely, while Iranian regulations need amendments to better align with international standards. This comparative study can contribute to a better understanding of the parties' obligations in international trade contracts and reduce potential disputes.

**Keywords:** *FOB; CIF; Seller's Obligations; Buyer's Obligations*

### **Introduction**

International Commercial Terms (Incoterms) play a crucial role in facilitating and standardizing international trade contracts. Among these terms, FOB (Free on Board) and CIF (Cost, Insurance, and Freight) are two of the most commonly used terms in maritime transactions. This research aims to

conduct a comparative analysis of the seller's and buyer's obligations in FOB and CIF contracts under Iranian and Iraqi law.

The significance of this study stems from the fact that despite the widespread use of these terms in international trade, their interpretation and implementation can vary across different legal systems. A thorough understanding of the parties' obligations in these contracts and their alignment with national laws is essential for traders and legal professionals to prevent potential disputes and ensure proper contract performance.

This paper adopts an analytical-comparative approach to examine the primary obligations of the seller and buyer, including delivery of goods, payment of the price, transportation, insurance, and loading, under Iranian and Iraqi law. The primary objective of this research is to identify the commonalities and differences between the laws of the two countries regarding the parties' obligations in FOB and CIF contracts and to propose solutions for further harmonizing national laws with international trade practices and norms.

The findings of this research can contribute to a better understanding of the legal nature of these contracts within the Iranian and Iraqi legal systems and pave the way for further studies in the field of international trade law.

## **Section 1: Obligation of Delivery of Goods**

### **Iraqi Law**

The Iraqi legislator defines delivery in Article 538(1) of the Civil Law No. 40 of 1951 as follows: "1. Delivery of the sold property is effected by removing the possession (evacuation) between the seller and the buyer in such a way that the buyer is able to take possession of it without any obstacle."

Article 540 also states: "1. If the buyer leases or sells the sold property to the seller before taking possession of it, or donates it, pledges it, or performs any other act of disposition for him that requires possession, it shall be deemed that the buyer has taken possession of the sold property. 2. And if he leases, sells, donates, pledges, or performs any other act of disposition for another person before taking possession of it that requires possession of the contracting party, such possession shall be a substitute for the possession of the buyer."

It is clear from the above that delivery in Iraqi law consists of two elements:

1. The sold property is placed under the possession of the buyer in such a way that he is able to possess and benefit from it without any obstacle, even if he has not physically seized the sold property.
2. The seller informs the buyer that the sold property is under his possession (Al-Akeili, 1971, p. 80).

The term FOB is used in Chapter Two before Article 298 of the Iraqi Commercial Law. Sale on condition of delivery at the port of loading on board the ship (FOB) Therefore, apart from the technical meaning and origin of FOB in international laws, at present and in the past in Iraqi law, the term FOB is synonymous with the sale with the condition of delivery of goods on board the ship.

### **Obligation of Delivery of Goods**

The obligation of delivery is an obligation that falls on the seller in the "FOB" sale; According to the Iraqi Commercial Law No. 30 of 1984 (amended), the definition of FOB in Article 298 is as follows: "Sale (FOB) is a sale that is concluded on the basis of delivery of goods on board the ship - which the buyer determines in a specified port for loading."

Article 367 of the Iranian Civil Law also states in the definition of delivery and possession: "Delivery means giving the sold property to the possession of the customer in such a way that he is able to make all kinds of dispositions and benefits, and possession means the customer's seizure of the sold property."

There is no definition of delivery in the 1980 Vienna Convention, but according to Clause (a) of Article 31 of the Delivery Agreement, it is interpreted as the delivery of goods, and in Clauses (c) and (d) of it, it refers to the provision of goods. On this basis, it can be said that from the point of view of the Convention, delivery means the delivery of goods to the carrier for sending to the customer or making them available (Karim Kashi Arani, 1382, p. 214).

According to Article 374 of the Iranian Civil Code, "the buyer can take possession of the sold property without the seller's permission." This implies that possession is not an independent legal act and does not require the seller's consent or will. Similarly, delivery of generic goods, whether fungible or specific, is not an independent legal act. However, certain conditions must be met:

- 1. Identification of the Specific Item:** The specific item to be delivered must be identified before the transfer of ownership can take place. This identification can occur through agreement between the parties, by the seller's act of selection, or by default to the first item of the genus.
- 2. Availability for Possession:** The item must be available for the buyer to take possession of. This means that there should be no obstacles preventing the buyer from physically controlling the goods.
- 3. Awareness of Delivery:** The buyer must be aware of the delivery and their right to possession of the goods. This awareness can be achieved through direct notification, prior agreement, or subsequent acknowledgment.

### Nature of Delivery

In Iranian law, delivery is considered a unilateral legal act, meaning that it is solely dependent on the seller's will to transfer ownership of the goods. The buyer's acceptance or acknowledgment of the delivery is not required for the transfer to take effect.

### Essential Elements of Delivery

Regardless of the type of goods (specific or generic), delivery in Iranian law requires the following essential elements:

- 1. Transfer of Possession:** The seller must transfer physical possession of the goods to the buyer or their authorized representative.
- 2. Ability to Exercise Control:** The buyer must have the authority to take control of the goods and exercise their ownership rights.
- 3. Awareness of Transfer:** The buyer must be aware of the transfer of ownership and their right to possession of the goods.

### 4. Methods of Notification of Delivery

The methods of notifying the buyer about the delivery of goods can vary depending on the circumstances. In some cases, the buyer may be informed at the time of delivery, while in others, they may be notified in advance or even after the transfer has taken place. The key requirement is that the buyer is made aware of the transfer of ownership and their right to possession.

## Definition of Delivery in Article 367 of the Civil Code

Article 367 of the Iranian Civil Code defines delivery as "the transfer of the sold property to the possession of the buyer in such a way that they are able to make all kinds of dispositions and benefits." This definition emphasizes the real delivery, meaning that the sold property must be placed in the buyer's or their representative's possession in such a way that there is no obstacle to the buyer's possession and benefit from the property, even if the buyer does not physically take possession of it. However, the buyer must be aware of the delivery and be considered the possessor of the property according to customary standards. This transfer of possession must be done in a way that the buyer has the ability to take possession and use the delivered item, which varies depending on the circumstances and conditions.

## Methods of Informing the Buyer about Delivery

The methods of informing the buyer about the delivery of goods can vary depending on the circumstances. In some cases, the buyer may be informed at the time of delivery, while in others, they may be informed in advance or even after the transfer has taken place. The key requirement is that the buyer is made aware of the transfer of ownership and their right to possession.

In comparing the definitions of "delivery" as articulated by the legislators of Iran and Iraq, it is apparent that Articles 367 of the Iranian Civil Code and 538 of the Iraqi Civil Code strive to convey a unified concept of delivery. However, when comparing these provisions with Incoterms concerning the seller's obligations, it is essential to note that the preparation of the goods, whether in the context of "specific goods" or fulfilling an order to manufacture the requested goods, is consistent.

The provisions specified by the Iraqi legislator regarding the seller's obligation to deliver goods to the buyer do not imply physical delivery. Instead, the term "delivery" refers to the handing over of shipping documents, clean and negotiable bills of lading. The seller endorses the bill of lading and delivers it to the buyer, as this document represents possession of the subject of the contract. This is explicitly stated in Paragraph 13 of Article 302 of the Iraqi Commercial Code: "The seller must, without delay, send a clean, negotiable bill of lading to the designated port for unloading, along with a list of the sold goods, their prices, insurance policy, or a substitute insurance certificate, and any other documents the buyer may request. If the bill of lading refers to a charter party, a copy of this contract must also be sent with the documents."

Moreover, according to the Iraqi legislator, a clean bill of lading possesses characteristics indicative of its authenticity. A clean bill of lading is free from clauses that typically indicate incomplete fulfillment of obligations. As specified in Article 304 of the Iraqi Commercial Code No. 30 of 1984: "A bill of lading is considered clean when it does not contain explicit additional clauses that indicate defects in the conditions of the bill of lading regarding the previous use of containers and packages, or reference to the non-liability for incidents affecting the goods due to the quality of packaging. Damages arising from the nature of the goods or from the carrier's ignorance of the packages or their weight are not included in this category."

Conversely, a "dirty" bill of lading indicates that the information provided by the seller does not match what is stated in the document. In this case, the buyer has the right to refuse to take delivery of the goods. The Iraqi legislator stipulates in Paragraph 1 of Article 305 of the Iraqi Commercial Code No. 30 of 1984: "The buyer must accept the documents when presented by the seller if they conform to the contract of sale. In the event of non-conformity, the buyer may reject them. Failure to object within four days of receiving the documents will be considered acceptance. Objections must be made by notifying the seller of the necessity to send documents that comply with the conditions within a reasonable period. The buyer may seek to annul the sale and claim damages according to the contract's terms after this period expires."

In some circumstances, the seller may be unable to obtain a specified ship. In such cases, the law grants the seller the right to charter any available ship. This is stipulated in the final part of Paragraph 13, Article 302 of the Iraqi Commercial Code: "... if the bill of lading in some matters refers to the charter party contract, a copy of this contract must be sent with the documents."

Other documents referenced by the Iraqi legislator include the certificate of origin and import and export permits, as well as a detailed list.

A certificate of origin is an officially certified document issued by the competent authority that verifies and inspects the export and import of goods between Arab and foreign countries. This certificate serves as a technical and qualitative record of the goods, containing documented information about the export and confirming the conformity of the goods and the accuracy of the information provided about them. The certificate of origin is subject to international conditions approved between Arab and foreign countries.

The Iraqi legislator stipulates in Paragraph 11 of Article 302 of the Iraqi Commercial Code No. 30 of 1984: "The seller must provide the certificate of origin at the buyer's request and expense."

Regarding import and export permits, an import permit (or import license) is a permission issued by the departments and institutions affiliated with the Ministry of Economy and Foreign Trade, allowing the importer to bring in specified goods. Without this permit, importing these goods is prohibited. Similarly, an export permit is a permission granted to carry out export operations in accordance with the laws of the issuing country. The Iraqi legislator addresses this obligation in Paragraph 10 of Article 302 of the Iraqi Commercial Code No. 30 of 1984, stating: "The seller must pay all taxes and duties on the goods up to the time of loading, including export duties."

In Paragraph 3 of the same article, the legislator further stipulates: "The seller must obtain, at his own responsibility and expense, the export permit or any other permit necessary for the export of the goods."

As mentioned, under Iranian legal rules, delivery is also the first and most important duty of the seller. In the course of delivery, the seller must obtain all necessary permits, unless otherwise agreed.

Generally, delivery involves several elements, including packaging, marking the goods, providing them as per the agreement, obtaining all necessary permits, ensuring the goods against loss before delivery, and arranging for transportation and loading onto the ship.

### **A. Packaging of Goods (Taghleeq)**

Here, it is essential to distinguish between packaging for the sale of goods and packaging for the transport of goods by sea (i.e., both must be carried out). Therefore, the seller must package the goods as necessary for their sale, meaning they should be placed in the best conditions necessary for preserving the materials from damage. Additionally, labels and markings indicating the type of goods, volume, constituent materials, storage method, and usage instructions must be attached to the goods. The seller must also prepare the goods at his expense in a manner suitable for maritime transport conditions, which involves placing them in specific containers or boxes based on the nature of the goods.

This requirement is addressed by the Iraqi legislator in Paragraphs 4 and 5 of Article 299 of the Iraqi Commercial Code No. 30 of 1948. Paragraph 4 states: "The seller must carry out the customary packaging for the goods at his own expense unless the transaction on the ship does not usually require packaging, or the nature of the goods necessitates the absence of packaging." Paragraph 5 further stipulates: "The seller must bear all costs related to the inspection and measurement of the goods, such as checking quality, quantity, weight, and number, which are necessary for loading the goods."

In Iranian law, the issue of packaging goods is not explicitly mentioned by the legislator. However, according to Article 380 of the Iranian Commercial Code, which states: "The sender must ensure that the merchandise is properly packaged. Marine damage arising from packaging defects is the responsibility of the sender," the necessity of appropriate packaging is implied. Iranian legal scholars believe that this matter is part of the production stages of goods and falls within the seller's obligations (Khazaei, 2007, p. 197).

In another analysis, it can be stated that according to Article 367 of the Iranian Civil Code, which defines delivery as allowing the buyer to possess and benefit from the goods in any manner, the obligation to package can be inferred. Since one of the main purposes of packaging is to protect the subject of the sale, and if the goods are damaged or incomplete before delivery, the buyer cannot fully possess and benefit from them. Therefore, based on the aforementioned points, Iranian law and Incoterms can be considered identical in this regard (Hakkazadeh, Momeni, and Gerger, 2022, p. 17).

### **A. Packaging of Goods**

According to Clause A-9 of Incoterms, the seller is obligated to package the goods unless commercial practice does not require him to do so. Regarding the specifics of packaging, neither Incoterms nor Iranian law specify particular conditions or regulations, leaving it to the buyer to specify any particular conditions or, in their absence, defer to local commercial customs. Based on my research on the packaging of domestic and export goods from Iran, it is necessary to consider customs regulations and specific packaging laws in each domain. Primary packaging pertains to the domestic market, while our concern is the packaging and transport specific to the import and export of goods. For customs packaging, standards specific to each type of goods are established by the Standard Organization and other relevant bodies to prevent any damage to the shipment. For example, in the case of packaging pharmaceuticals, the standards require that the packaging prevents moisture absorption by the shipment. Similarly, for food packaging, the customs packaging must maintain the necessary temperature to prevent spoilage. It is essential to note that each country has its own standards for the packaging of export goods, and exporters must be aware of these standards to avoid hefty fines, penalties, and the risk of shipment delays or stoppages.

The Iraqi law mentions packaging for sale and packaging for transport, while the Iranian Civil Code does not explicitly address this matter. However, specific customs regulations specify general and specific guidelines for each product and its packaging for shipment.

### **B. Supplying Goods in Accordance with the Contract**

Under FOB terms, the seller is obliged to supply the goods in accordance with the specified conditions, meaning the goods must meet the quantity, volume, and measurements agreed upon at the time of the FOB contract. This is also stipulated by the Iraqi legislator in Paragraph 5, the last part of Article 299 of the Iraqi Commercial Code No. 30 of 1984, stating: "The seller must bear the cost of any operations related to the inspection and calculation, such as checking quality, measuring, weighing, and counting, which are necessary for loading the goods."

According to Article 275 of the Iranian Civil Code, "The obligee cannot be forced to accept something other than what is the subject of the obligation, even if it is more valuable or equivalent to the subject of the obligation." Under Iranian law, in all obligations, if the obligation is not fulfilled, the obligee must first demand specific performance of the obligation. If specific performance is not possible, the obligee can annul the contract (Katouzian, 2016, p. 86).

While there is no explicit rule in Iranian law mandating specific performance as a guarantee of obligations, the rules governing sales contracts largely apply to other contracts, and the principles governing other legal institutions follow suit. This principle is evident in Article 237 of the Civil Code

regarding conditional obligations, where it states that if a party fails to fulfill a condition, the other party can refer to a judge to demand specific performance of the condition. Similarly, Article 476 regarding the delivery of leased property states that if the lessor fails to deliver the leased property, the lessee can compel the lessor, and if unable, the lessee has the right to annul the lease (Safai and others, 2005, p. 234).

There is no difference between Iranian and Iraqi law and Incoterms concerning supplying goods according to the contract. Regarding costs, under Article 381 of the Iranian Civil Code, the seller bears these costs. According to Article 382, mutual agreement and custom govern this matter, meaning it can be stipulated otherwise.

Under Iraqi law, all costs are borne by the seller. However, under Iranian law, according to Articles 381 and 382 of the Civil Code, the costs of delivering the goods are borne by the seller, and the costs of delivering the price are borne by the buyer. As stated in Article 382, mutual agreement and custom govern the previous article.

### **C. Guarantee Against Loss of Goods Before Delivery**

The seller must bear the risks associated with the goods before they pass the ship's rail at the named port of shipment. This is stipulated in Paragraph 9 of Article 299, stating: "The seller must bear the costs associated with the goods and all risks to which the goods are subject until they have actually passed the ship's rail at the named port of shipment, including all export duties, wages, and charges paid related to the export as well as the costs associated with loading the goods onto the ship."

Referring to general principles, in bilateral contracts, the obligor bears the consequences of loss (Sultan, 2005, p. 275).

In Iranian law, if the goods are destroyed before delivery (known as "exchange warranty"), the seller is responsible for the loss, and if the price has been paid, the seller must return the transaction price. In such cases, where an external event causes non-performance of the obligation, and the seller is not involved, the debtor is exempted from liability, and is not required to pay damages. Article 227 of the Civil Code states: "The defaulting party is liable for damages only if he cannot prove that the non-performance was due to an external cause not attributable to him," and Article 229 complements this by stating: "If the obligor cannot fulfill his obligation due to an event that he could not prevent, he is not liable for damages" (Katouzian, 1997, pp. 248-249).

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According to Article 387 of the Civil Code: "If the subject matter of the sale perishes without the fault and negligence of the seller before delivery, the sale is void, and the price must be returned to the buyer unless the seller has approached the ruler or his deputy for delivery, in which case the loss will be borne by the buyer." The loss of the subject matter is one of the grounds for the termination of obligations. Therefore, it is clear that with the loss of the property in question, there is no longer a subject for the performance of the obligation (Shahidi, 2008, p. 136).

Article 483 of the Civil Code, which pertains to the loss of the leased item during the lease term, states: "If the leased property is wholly or partially destroyed due to an accident during the lease period, the lease is terminated in respect of the destroyed part from the time of destruction, and in the case of partial destruction, the lessee has the right to terminate the lease concerning the remaining part or only demand a proportional reduction in the rent." The above article and Article 387 have similar rulings. As Article 362 of the Civil Code states that one of the effects of a valid sale is that the contract of sale is proprietary, Article 387 appears to be an exception to this rule, because the apparent implication of the proprietary nature of the contract is that the loss is borne by the new owner, not the seller who was previously the owner and transferred the goods to the buyer through the contract of sale. However, considering the mutual intent of the parties, this analysis is not correct, and Article 387 is not deemed an exception because each party entered into the contract with the intent to perform the respective obligations. Accordingly, if the buyer knew at the time of the contract that they would not receive the desired goods, they would not agree to the transaction (Qasemzadeh, 2007, pp. 207-208). "As soon as the subject matter of the sale is destroyed, since the buyer's obligation to pay the price loses its basis, the seller's obligation to deliver the goods is also terminated, and the price is returned to the buyer" (Katouzian, 1985, p. 188).

There is an exceptional case where sometimes the owner's liability does not cease with delivery, and exceptionally, after delivery, the seller remains liable (Qasemzadeh, 2007, p. 208). For example, Article 453 of the Iranian Civil Code states: "In the case of animal, assembly, and conditional options, if the goods are damaged or destroyed after delivery during the option period of the seller or the parties, the buyer is liable, but if the option is exclusive to the buyer, the seller is liable for the damage or destruction."

For the seller to be liable for the destruction of the goods before the buyer's possession under Article 387, the following conditions must be met:

1. The goods must be specific, and if generic, the individual item must be specified. If the specific item is not determined, the seller remains obligated to deliver the goods. If, under certain conditions, all the goods are destroyed due to an external event, and only one sample remains, what remains is considered the buyer's property, and the seller is obligated to deliver it, treating it as a specific item.
2. The destruction must be due to a natural disaster or external event, not caused by the seller's fault. If the destruction is due to the seller's negligence or failure to deliver the goods upon the buyer's request, resulting in the goods being destroyed by an external event, the seller is liable and must provide compensation to the buyer because, in this case, the seller's custodial possession has changed to a liable possession. The destruction cannot be attributed to the buyer or a third party.
3. The destruction must occur before delivery, except in the exceptional case of Article 453.

4. The seller must not have approached the ruler or his deputy for the delivery of the goods (Qasemzadeh, 2007, pp. 209-210).

Under Incoterms, the risks remain with the seller until delivery (passing the ship's rail). Similarly, under Iranian law, if the goods are destroyed before delivery, known as "exchange warranty," the seller is responsible for the loss, and if the price has been paid, the seller must return the transaction price.

#### **D. Obligation Regarding the Place of Delivery**

In FOB sales, there is no ambiguity about where the goods should be delivered because the seller

##### **Delivery Location Obligations**

In FOB contracts, the seller delivers the goods onto the ship designated by the buyer. Comparing the legal provisions of the two countries regarding the delivery location, both laws refer to a specific place for delivery in the contract. If the location is not determined, Iraqi law considers the buyer's residence at the time of the contract as the delivery location and ultimately acknowledges customary practice. According to Iranian law, in the absence of a specified location, the seller must deliver the goods at the contract's place. However, Article 375 of the Iranian Civil Code, which acknowledges the authority of customs and practices, aligns both laws to the same conclusion.

##### **Delivery Timing Obligations**

In FOB contracts, the timing of delivery is crucial for contract execution. The seller must commit to the delivery date since the buyer chartered a ship and informs the seller of its specifications and arrival time at the loading port. The Iraqi legislator in Article 299(2) of the Iraqi Commercial Code No. 30 of 1984 states: "Delivery of goods onto the ship designated by the buyer at the specified loading port according to the port's procedures and at the agreed date or period." Thus, the buyer must promptly notify that the goods have been delivered onto the ship.

According to Iranian law, the delivery time is primarily based on the parties' agreement. If a specific time is agreed upon, the contract is termed as a fixed-term contract, applicable to both specific and generic goods. For generic goods, it is referred to as a forward sale (Salaf or Salam), and for deferred payment of the price, it is called a credit sale (Nesieh) (Ghasemzadeh, 2007, p. 200). If no time is specified, customs and practices determine the parties' implicit intention. In their absence, the obligation becomes immediate, as indicated in Article 344 of the Iranian Civil Code (Safai, 2005, pp. 246-247).

##### **Document Delivery Obligations**

The Iraqi legislator in Article 305(1) of the Iraqi Commercial Code No. 30 of 1984 stipulates: "The buyer must accept the documents upon their presentation by the seller—if they comply with the sales contract—or reject them in case of non-compliance. If no objection is raised within four days from the date of receipt, it is deemed acceptance, and objections must be communicated to the seller promptly, requiring compliance with the terms within a reasonable period. After this period, the buyer can demand contract termination with compensation."

This indicates that the delivery and acceptance of documents typically occur simultaneously and at the same location, as specified in the sales contract. Documents serve as a means of transferring possession of the goods to the buyer. Once the buyer receives the documents, they effectively take possession of the goods. The buyer has a sufficient period to review the documents and can accept them explicitly or implicitly. Implicit acceptance is inferred from the buyer's silence after reviewing the documents. If the buyer accepts the documents without any objections, it is assumed that they agree to the terms, especially concerning transportation, insurance, loading location, and timing. This acceptance must occur after a period allowed for document review, which is legislatively set at four days from receipt.

After reviewing, the buyer can accept or reject the documents due to non-compliance with the contract terms.

In Iranian law, there is no explicit obligation for the buyer to accept documents. However, Article 383 of the Iranian Commercial Code mentions that the bill of lading is prepared by the sender and delivered to the recipient by the carrier. The carrier is only bound by the sender's instructions if the receipt has not yet been delivered to the recipient, emphasizing the carrier's responsibility to hand over the bill of lading.

Under FOB terms, delivery must occur at the time specified by the buyer onto the ship. Both Iraqi and Iranian laws adhere to this principle, recognizing customary practices in the absence of specified terms. Some documents, particularly the bill of lading and export permits, must be delivered by the seller to the buyer.

In maritime sales, the bill of lading is a crucial document demonstrating the seller's fulfillment of their loading obligation. Originating in the seventeenth century, the bill of lading became recognized as a symbol of goods ownership, granting possession rights to its holder. The bill of lading is defined as "a document evidencing the contract of carriage and the receipt or loading of goods by the carrier, obligating the carrier to deliver the goods against its presentation."

The Iraqi legislator refers to the bill of lading ( *سند الشحن* ) as one of the seller's obligations in FOB contracts, stating in Article 299(6): "The seller must provide the buyer with a clean, customary bill of lading confirming the delivery of goods onto the ship at the seller's expense." Therefore, the seller in FOB contracts is responsible for obtaining the bill of lading, as acknowledged in Iraqi law.

In Iranian maritime law, the bill of lading is defined as: "Principally, the ship's bill of lading is a certificate issued by the captain or carrier to the sender of the goods" (Sotoudeh Tehrani, 1965, p. 59).

### **Definition and Importance of the Bill of Lading**

Another definition of the bill of lading is: "A document issued by or on behalf of the actual carrier to the person who has contracted with him for the carriage of goods. A bill of lading is a document of carriage of goods by sea" (Samavati, 2000, p. 177).

According to the resolutions of the High Council for Transport Coordination of Iran, the bill of lading is defined as: "A document indicating ownership of the goods and transferable, issued by the carrier or his representative after receipt of the goods, indicating the carriage of specific and determined goods from an agreed point by ship, truck, railway, airplane, or a combination of these modes in exchange for the stipulated freight."

It is necessary to note that the international sale of certain goods and products requires export permits from the exporting country. In reference to the seller's obligations in FOB sales, the Iraqi legislator in Article 299(2) has stipulated that obtaining an export permit is always the responsibility of the seller. The article states: "Third: The seller must at his own responsibility and expense obtain the export permit for the goods and all other necessary permits for the export of the goods, provided the goods are ready for export."

A certificate of origin is also a document prepared by the manufacturing or producing company of the goods, authenticated by the Chamber of Commerce of the country of origin or any legally authorized entity, stating that the goods are produced or manufactured in a particular country. If multiple countries are involved in the production, the country where the last substantial transformation took place is considered the country of origin. The certificate should include the following information: type of goods, producing company, place of production, exporting company, relevant authority, and

transportation intermediary. This information is crucial for protecting consumers against commercial fraud and counterfeiting. Article 299(8) of the Iraqi Commercial Code No. 30 of 1984 mandates: "The seller is obligated to provide the buyer with a certificate of origin."

The Iraqi Embassy in London highlights the costs related to origin and inspection certificates, stating: "The costs for certifying the certificate of origin, commercial lists, and inspection certificates are in accordance with the law of certifying Iraqi and foreign documents No. 52 of 1970, as amended."

The Council of Ministers, upon the proposal of the Ministry of Commerce/Department of Foreign Economic Relations, in decision No. 190 of 2019, referred to the certification of the certificate of origin. The Council of Ministers, in its nineteenth regular session held on 14/5/2019, annulled Article 5 of the first item of the Council of Ministers' decision No. 336 of 2018, which had stipulated the certification by the Chamber of Commerce and Industry in the country of origin and the intermediary country.

The inspection certificate is obtained by the seller from specific authorities in their country to certify that the goods are safe from harms that might affect humans, such as radioactive waves and other contaminants, and that they are fit for human and animal consumption (Al-Muqaddadi, 1998, p. 188).

Regarding all permits, Iraqi law places all costs on the seller. In contrast, according to Articles 381 and 382 of the Iranian Civil Code, the costs of delivering the goods are borne by the seller, and the costs of delivering the price are borne by the buyer. Article 382 states that the parties' agreement and customary practice govern over the previous article.

### **Obligations Related to Transport of Goods**

In FOB contracts, the buyer is obligated to charter a ship for transporting the goods. If the buyer does not specify the ship to the seller, they are responsible and must contract with an agreed carrier to transport the goods from the delivery location to the destination stated in the contract. The buyer must notify the seller of the ship's name, loading dock, and the date for delivery onto the ship. The Iraqi legislator explicitly mentions this obligation in Article 300(1) of the Iraqi Commercial Code No. 30 of 1984: "[The buyer] must charter a ship or secure space on a ship at his own expense and notify the seller within a reasonable time of the ship's name, loading dock, and the date for delivery onto the ship."

If the buyer is unable to provide the necessary loading instructions or fails to inform the seller within the specified time, they will not be held responsible for any damages resulting from the non-delivery of goods, and the buyer will be liable for the damages resulting from the non-acceptance of the goods. Article 300(4) of the Iraqi Commercial Code No. 30 of 1984 states: "The buyer must bear additional costs that may arise from the failure to notify the ship's name and loading date within a suitable time, as well as damages that may occur after the expiration of the specified period or the agreed time for determining the delivery date, provided the goods were ready at that time."

In CIF contracts, the seller is obligated to arrange for the carriage of specific goods from the loading port to the agreed destination port. The contract may state CIF "Fao" or CIF "Bushehr," indicating the destination port rather than the place of delivery. Article 302(2) of the Iraqi Commercial Code No. 30 of 1984 states: "Second: The seller must arrange the transportation contract according to the terms prevailing at the loading port for similar goods...".

Agreement on the terms of the transport contract is crucial for the settlement of the parties' rights, particularly for the buyer. Failure to adhere to these terms allows the buyer to claim against the carrier. If the sales contract does not specify these terms, the carrier may alter the ship's route or prolong the journey. Therefore, parties typically prefer to agree on transport terms. If no agreement is made, the seller must ship the goods according to the customary practices at the loading port for similar goods.

Before Article 301 of the Iraqi Commercial Code, under the title of Chapter Three, it is stated: "Sale with the condition of transporting goods and CIF are synonymous with the condition that the transportation and insurance of goods are the seller's responsibility, not the buyer's." Concerning the ship carrying the goods, Article 302(2) of the Iraqi Commercial Code concludes: "... and the ship chosen for transportation must be suitable for carrying such goods."

### **Fundamental Principle in CIF Contracts**

The fundamental principle in CIF (Cost, Insurance, and Freight) contracts is that the ship in which the loading takes place is specified in the sales contract. However, in some cases, the contract may not specify the ship, in which case the seller is obligated to fulfill this duty themselves.

The legislator has stated this obligation of designating the ship, requiring the seller to choose an appropriate vessel. This means that the seller must use a ship capable of transporting the specific type and nature of the sold goods from the port of loading to the port of destination.

Regarding the route through which the goods are transported, if the sales contract specifies a particular route, that route must be followed. If the contract does not specify the route, the customary and usual route must be taken, depending on the prevailing conditions at the time of executing the contract. It is not necessary for this route to be the geographically shortest or a fixed and unchanging path. This is mentioned in Article 14(1) of the Iraqi Transport Law. Concerning the route the ship takes to transport the goods, the seller must use a faster and safer route. It is necessary to send the goods directly by ship from the port of origin to the port of destination without needing an explicit condition in the sales contract. This direct transportation is stated in Article 31 of the Transport Law. However, in cases of necessity, the carrier has the right to change the route, even if it results in delays, as mentioned in Article 17.

Regarding the freight charge, it is considered one of the elements of the overall price of the goods. The seller is generally expected to pay this to the carrier at the time of concluding the transport contract and include it in the invoice sent to the buyer. The Iraqi legislator refers to this obligation in defining CIF in Article 301 of the Iraqi Commercial Code No. 30 of 1984, stating at the end of the article: "CIF sale is a sale in which the seller undertakes to conclude a transport contract for the goods from the port of loading to the port of discharge, to insure the goods against transport risks, and to pay the necessary costs and expenses, adding them to the price of the goods." As we can see, the term "necessary costs and expenses" is mentioned in an absolute sense, not limited to a specific type of obligation. This includes all expenses the seller incurs, from sending the goods under the contract to their safe delivery to the buyer.

As stated, according to the Iranian Civil Code, the costs of delivering the goods, including transport and necessary permits, are borne by the seller unless otherwise agreed. However, if the seller, as the exporter, concludes a CIF contract, they must adhere to its specific conditions.

### **Obligation to Pay the Price**

In FOB (Free On Board) sales, the price paid by the buyer includes the costs related to packaging and domestic transportation in the exporting country, as well as all expenses incurred before loading the goods onto the ship. These costs include port charges and the cost of loading the goods onto the ship and other expenses necessary for delivering the goods to the ship, such as warehousing costs at the dock. All these expenses are specified in the sales contract, and the buyer is aware of them when the contract is concluded. These are listed in the invoice and presented to the buyer along with other documents for their information. In some cases, the price is not specified in the contract but determined by mutual agreement between the parties, based on the prevailing price at the time of the contract for similar goods under similar conditions (Abdul Hamid, 2002, p. 147).

Regarding the seller's entitlement to the price, the general rule in FOB sales is that the seller is entitled to the price upon delivering the goods, i.e., when the goods pass over the ship's rail or when the seller hands over the goods to the carrier. The Iraqi legislator in Civil Law No. 40 of 1951, Article 571, stipulates: "The buyer is obligated to pay the agreed price in accordance with the terms stipulated in the contract, and the cost of performing the payment is also borne by the buyer."

As for the place of payment, Article 573 of the Iraqi Civil Code No. 40 of 1951 specifies: "If the place of payment is determined in the contract, it must be paid at that place. If no place is specified, it must be paid at the buyer's residence at the time of payment unless custom or law dictates otherwise."

In CIF sales, the price is an estimated amount including the unit price of the goods along with freight charges and insurance premiums, making it an inseparable whole. Therefore, the buyer in a CIF contract can be assured that the cost of the goods will not exceed the agreed amount under any circumstances. Some have described this as a "global price," although there is a clear distinction between the two descriptions. The most significant characteristic of a CIF sale is the estimated nature of the price, where the buyer is obligated to pay the price specified in the contract. The Iraqi legislator has affirmed this obligation in the first clause of Article 305 of the Commercial Code, stating: "The buyer must accept the documents when presented by the seller, provided they comply with the terms of the sales contract. If they do not comply, the buyer may reject them. Failure to object within four days from receipt of the documents will be considered acceptance. The objection should be communicated to the seller by notifying them of the need to send documents in accordance with the terms within a reasonable time. The buyer may demand the annulment of the sale along with compensation for damages according to the contract terms after this period expires."

The buyer will not incur additional costs for freight or insurance premiums after the contract is concluded; the seller is responsible for these payments. The Iraqi legislator, in the second clause, has indicated that the payment of the price is in accordance with the provisions of this law.

### **Timing of Goods Acceptance and Payment in Iraqi Law**

Regarding the timing of accepting goods, Iraqi law does not explicitly address this obligation, nor does it specify the place of payment for the price. However, the Iraqi Civil Code indicates that the timing of payment is based on mutual agreement between the parties. As stated in Article 571(1) of the Iraqi Civil Code No. 40 of 1951, "The buyer is obliged to pay the agreed price according to the terms stipulated in the contract, and the costs of payment are also borne by the buyer."

Therefore, sometimes the seller and buyer agree that the price will be paid upon the receipt of documents or upon the arrival and inspection of the goods.

Regarding the place of payment, the Iraqi legislator in Civil Code No. 40 of 1951, Article 573, stipulates: "If the place of payment is determined in the contract, it must be paid at that place. If no place is specified, the price must be paid at the place where the goods are received, and if the price is not due at the time of delivery of the goods to the seller, it must be paid at the buyer's residence at the time the price becomes due, unless custom or law dictates otherwise."

According to Article 362(4) of the Iranian Civil Code, a sale contract obliges the buyer to pay the price, and according to Article 381, the costs of delivering the price are borne by the buyer while the costs of delivering the goods are borne by the seller. Consequently, the buyer is obliged to pay the agreed price in the contract. Regarding the conformity of the goods with the subject of the sale, Article 275 of the Civil Code states that the buyer cannot be forced to accept something other than what was agreed upon if the goods do not conform to the contract (Katouzian, 2000, p. 239).

According to Article 394 of the Iranian Civil Code, the buyer must pay the price at the time and place specified in the contract, just as Article 571 of the Iraqi Civil Code indicates. If the contract does not specify the timing and place of payment, Article 220 of the Civil Code mandates that the parties are bound not only by the explicit terms of the contract but also by all the results derived from custom and law. Therefore, in cases where the timing and place of payment are not specified in the contract, custom prevails. If custom is silent, by analogy with Article 490 regarding leases, which states that rent must be paid at specified times and, if no time is set, it must be paid immediately. Regarding the place, if it is not specified and custom is also silent, Article 280 of the Civil Code states that the place of performance of the obligation is where the contract was concluded. In contrast, the Iraqi Civil Code specifies the place of delivery of the goods and the buyer's residence if neither is determined nor custom is silent (Katouzian, 2000, p. 315).

### **Obligation to Accept Goods**

The buyer is generally expected to accept the goods at the port, as ownership transfers to the buyer when the goods are loaded onto the designated ship. Therefore, the buyer must be present at the port of loading, either personally or through a representative, to inspect the goods before they are loaded to ensure they conform to the contract terms.

In FOB sales, the seller must notify the buyer of the loading time so that the buyer can be present to inspect the goods before loading. If the seller notifies the buyer of the loading time and the buyer finds that the goods do not conform to the contract terms, they can reject the goods upon their arrival at the port. In this case, the burden of proof lies with the seller to show that the goods were loaded according to the contract terms. Sometimes, the seller may agree in advance with the buyer to reduce the price to avoid rejection of the goods in case of non-conformity. The parties may also agree on a time frame within which the buyer must notify the seller of the rejection, otherwise, the right to reject will be forfeited. However, if the buyer accepts the goods, this acceptance is valid and irrevocable (Al-Muqaddadi, 1998, p. 190).

The Iranian Commercial Code states in Article 394 of the Civil Code that "The buyer must pay the price at the place and time and according to the conditions stipulated in the contract." Regarding the timing of payment, the price should be paid at the time of delivery of the goods unless the parties or custom specify otherwise. If the buyer has possession of the sold item, and there are no contractual conditions preventing them, they can use the right of retention of the price until the risk is removed. They can also request a guarantor in return for the payment of the price.

According to Article 377 of the Civil Code, "Each of the buyer and seller has the right to refuse to deliver the price or the goods until the other party is ready to deliver, unless the price or goods are due. In this case, the due item must be delivered."

The costs of delivering the price are borne by the buyer according to Article 381 of the Civil Code. Article 382 of the Civil Code states that the agreement of the parties and custom can change the costs of the transaction or the place of delivery.

In defining possession, Article 367 of the Civil Code states that possession is the buyer's control over the goods. Possession is typically realized through customary and widespread means, as mentioned in Article 368. As stated, possession is not an independent legal act and, according to Article 374 of the Civil Code, requires the seller's permission and will for specified items. In possession of the price, Article 373 of the Civil Code states that if the price is in the buyer's possession, no new possession is required. Generally, the Iranian Civil Code does not consider the possession of goods as a buyer's obligation, as ownership transfers upon the conclusion of the sale, and the Civil Code does not require the owner to possess their property (Tabatabai, Razmi, and Rajaii Pour, 2020, pp. 29-33).

In CIF sales, the buyer is obligated to accept the goods upon their arrival at the specified port for unloading, as agreed in the sales contract. The Iraqi legislator in Article 305(3) of the Commercial Code No. 30 of 1984 states: "The goods must be received at the agreed port of arrival." The buyer is also responsible for the costs of unloading and transporting the goods to the warehouse unless otherwise agreed. Sometimes, the buyer refuses to accept the goods due to a shortage in quantity or a specific defect. In this case, the buyer must notify the seller within fifteen days from the actual delivery date. If the goods are found unsuitable for the intended use, the buyer has the right to rescind the contract according to general rules, unless there is an agreement requiring rescission. If the request for rescission is not accepted, the price will be reduced. However, if it is found that the quantity of goods delivered exceeds the agreed amount, the buyer must pay the additional amount. If the buyer fails to do so, the excess must be re-exported by the seller to the country.

In addition to the aforementioned obligations, it should be noted that the Iraqi legislator imposes other obligations on the buyer, as stated in Article 305(4): "The buyer assumes all risks that may occur to the goods after they come into his possession, and all costs and expenses related to these risks are also borne by the buyer from that moment."

As stated, Article 367 of the Civil Code defines possession as the buyer's control over the goods. Possession is typically realized through customary and widespread means, as mentioned in Article 368. As stated, possession is not an independent legal act and, according to Article 374 of the Civil Code, requires the seller's permission and will for specified items. In possession of the price, Article 373 of the Civil Code states that if the price is in the buyer's possession, no new possession is required. Generally, the Iranian Civil Code does not consider the possession of goods as a buyer's obligation, as ownership transfers upon the conclusion of the sale, and the Civil Code does not require the owner to possess their property (Tabatabai, Razmi, and Rajaii Pour, 2020, pp. 29-33).

In summary, the acceptance of goods, which is the final stage of transportation, requires the goods to be unloaded from the international transport vehicle. The costs of unloading, as agreed by the parties, are borne by either the buyer or the seller. After unloading, the buyer must take delivery of their goods at their own expense, either personally or through a carrier.

## **Clause 6: Obligation to Load Goods**

### **Iraqi Law**

Article 300 of the Iraqi Commercial Law, Section 1, Paragraph 2, states that the buyer "shall rent the vessel or the necessary space on the vessel at his own expense and inform the seller of the name of the vessel, the loading dock, and the date of delivery of the goods on board the vessel within a reasonable time."

The seller is obligated to load the goods at the agreed-upon port and must carefully adhere to this condition. If the seller loads the goods at a different port, they will be liable, and the buyer may refuse to accept the documents. If a specific dock is designated for loading, the seller will also be liable if the goods are loaded from a different dock. While the Iraqi Commercial Law does not explicitly address this obligation, it can be inferred from customary practices and general principles.

In most CIF cases, there is no agreement on a specific port for loading, so the seller is free to choose any port they wish. However, they must exercise due care and attention, and typically, the seller chooses the port closest to their residence or business center. In some cases, the seller may delegate the choice of port to the buyer at a later date. In such cases, if the buyer fails to designate a port within a reasonable time, they will be liable for any damage to the goods, provided that the goods themselves have been specified (Komany, 2003, p. 182).



## Iranian Law

Under Iranian law, the seller is responsible for delivering the goods to the buyer at the time and place specified in the contract. If the delivery time is not specified, customary practices will apply unless otherwise agreed upon, as stated in Article 330 of the Iranian Commercial Law.

### Clause 7: Obligation to Insure Goods

## Iraqi Law

The seller must insure the goods in accordance with the terms specified in the sales contract, customary business practices prevailing at the time of contract formation, and prior business practices. If the type of insurance and its conditions are not specified in the sales contract, the seller is only obligated to provide an insurance policy in accordance with standard terms - and in accordance with customary business practices prevailing at the port of loading at the time of loading the goods on board the vessel and for the same type of goods on a similar voyage.

This is mentioned in Articles 302(5) and (6) of the Iraqi Commercial Law No. 30 of 1984. Article 5 states: "The seller shall conclude an insurance contract with a reputable insurer against ordinary risks and shall pay the necessary expenses and costs for this purpose. If the loading of the goods takes place in several installments, each installment must be insured separately."

Article 6 states: "The seller shall, at his own expense, procure a negotiable insurance policy with the conditions on which transactions are carried out, provided that the insured amount is not less than 10% less than the price stated in the sales contract."

The nature of the goods themselves, along with the nature of the chartered vessel, the port to which it is sent, and the route the goods will take during the voyage, must also be considered. All of these factors may have an impact on the terms on which insurance is based (Hosni, 2001, p. 324).

The seller's insurance includes certain conditions, and sometimes the insurance is against war risks and sometimes against all risks.

With regard to insurance against war risks, the general rule is that if the contract is concluded in time of peace, the seller is not obliged to insure against war risks unless this is expressly stated in the contract. However, if there is a possibility of war or even a threat of war, the seller must insure the goods against war risks, as is explicitly stated in Article 303 of the Iraqi Commercial Law No. 30 of 1984, which states: "The seller shall not be obliged to insure against unusual transport risks unless otherwise agreed, and shall not be obliged to insure against war risks unless the buyer requests this of the seller at his own expense."

With regard to all-risks insurance, sometimes the buyer seeks to obtain the maximum possible coverage for goods transported by sea, so they stipulate in the sales contract that the goods must be insured against all risks. This is because an ordinary insurance policy does not cover all risks to the goods, such as losses arising from the personal negligence of the insured, the negligence of the ship's captain and crew, the inherent defect of the insured goods, and partial loss, as the insurer is exempt from liability for losses to the goods that do not exceed a certain amount (Diab, 1999, p. 230).

Regarding the price of the insured goods, Article 302(6) of the Iraqi Commercial Law No. 30 of 1984 states: "The seller shall, at his own expense, procure a negotiable insurance policy with the conditions on which transactions are carried out, provided that the insured amount is not less than 10% less than the price stated in the sales contract."

Insuring the goods is one of the steps involved in the delivery of the goods. Under Iranian law, it is also one of the seller's obligations. The seller must arrange for insurance in accordance with the type of insurance specified in the contract between the parties.

## ***Research Findings***

### **Incoterms FOB and CIF**

#### **FOB**

- **Definition:** In FOB terms, the seller is responsible for loading the goods onto a vessel at the port of origin. From that point on, responsibility and costs are transferred to the buyer.
- **Comparison with Iranian Law:** In Iranian law, delivery is defined as "giving the sold property to the possession of the buyer in such a way that he is able to make all kinds of dispositions and benefits." This definition may not be fully consistent with the concept of FOB, which emphasizes the delivery of goods on board a vessel, as it places more emphasis on physical possession. Article 298 of the Iraqi Commercial Law defines FOB as a sale based on the delivery of goods on board a vessel at a specified port for loading. Thus, the Iraqi legislator's definition is more consistent with the concept of FOB. In both countries, the seller is obliged to deliver the goods at a specified place. In Iraqi law, if the place of delivery is not specified, the buyer's residence is taken as the basis, while in Iranian law, the place where the contract is concluded is taken into account, unless custom and practice determine otherwise.

#### **CIF**

- **Definition:** In CIF terms, the seller is responsible for insuring the goods and paying the insurance costs to the destination.
- **Comparison with Iranian Law:** In Iran, the seller is also obliged to insure the goods according to the terms of the contract. This provision is consistent with the term CIF, as insurance of the goods is one of the seller's obligations. In Iraqi law, the seller is obliged to insure the goods for at least 10% more than the price stated in the contract in order to cover all possible risks. This provision is also consistent with the term CIF, but it provides more details on the amount of insurance. In both countries, the provisions on insurance of goods are consistent with the term CIF, but Iraq has set out more details.

#### **Packaging**

- **Both terms refer to the packaging of goods, but the packaging details may vary depending on the contract.** In Iran's specific customs laws, packaging is mentioned, but it is not generally addressed in the Civil Code. This gap can lead to problems in some cases, as proper packaging is part of the seller's obligations. In Iraqi law, there are specific regulations for the packaging of goods, which are dealt with in more detail. This provision is consistent with international principles. The packaging regulations in Iran are not sufficiently transparent and may not fully comply with international standards and need to be revised and more detailed regulations to be drafted.

## ***Comparative Analysis***

A comparison of Iranian and Iraqi law with the FOB and CIF provisions shows that both countries have mandatory legal frameworks in this area, which are similar in some cases, but the manner in which these obligations are fulfilled and the regulations relating to delivery and insurance differ.

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