

CIF Contracts in International sales of goods

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Article 141 of the UAE Commercial Transactions Law (Federal Law 18 of 1993) states: 'A CIF sale is one concluded against a lump sum price covering the price of the item sold, the maritime insurance charges and freight by vessel to the port of destination.'

This article explains the essential features of a CIF contract. A CIF contract requires the vendor to ship at the port of shipment the agreed goods in the underlying contract of sale, to procure a contract of carriage (bill of lading) under which the goods will be delivered to the agreed destination, to arrange for insurance which will be available for the benefit of the purchaser, to make out a commercial invoice and finally to tender these documents to the buyer who must be ready and willing to pay the price of the shipped goods. In such a case, the title of the goods may pass either on shipment or on tender of the documents. The risk generally passes on shipments or as from shipments, but possession does not pass until the documents which represent the goods are handed over in exchange for the price. As a result, the buyer, after receipt of the documents, can claim against the carrier for breach of the contract of carriage and against the underwriter for any loss covered by the policy.

Under a CIF contract, the purchaser is obliged to pay against the tender of a clean bill of lading that covers the goods contracted to be sold, an insurance policy and a commercial invoice that shows the price. The purchaser is obliged to pay against the tender of the documents notwithstanding of fact that the goods have been lost or damaged at sea after the shipment. In the event of loss, the purchaser must pay the price on tender of the documents and his remedies, if any, will be against the carrier as per the bill of lading or against the underwriter as per the insurance policy, but not against the vendor under the contract of sale. If the purchaser refuses to pay against the documents without any legitimate reason, he shall be liable to compensate the vendor for damage that may result, as per Article 150 of the Commercial Transactions Law.

English case law, which forms the basis for many international shipping contracts, has established that it is irrelevant whether both buyer and seller knew of the loss of the ship before the latter tendered the documents; the buyer must pay the price. Hence, the vendor can tender the documents even though he possesses, at the time of tender, actual knowledge of the loss of the ship or the goods. Consequently, in the event of loss, the purchaser will receive the documents rather than the goods for which he contracted. Even if the purchaser had already paid the price, he cannot demand its return. In addition, a vendor under a CIF contract for the sale of goods who has shipped the agreed goods under a clean bill of lading and obtained the proper documents, can tender those documents to the purchaser notwithstanding he knows at the time of such tender of the loss of the goods.

Under a CIF contract, the vendor performs his obligations by tendering the documents to the purchaser. He is not obliged to deliver the goods to the agreed destination but he is under a negative duty not to prevent the goods from being delivered to the purchaser at their destination. This might done by preventing the carrier from delivering them to the purchaser or by sending them to a different destination. However, if the contract contains a clause that imposes on the vendor an obligation to deliver the goods to the agreed destination, it is not considered as a CIF contract, even if the letters of 'CIF' appear in the contract. Not every contract which is expressed to be a CIF contract is such. Article 155 of the Commercial Transactions Law states that 'a contract which contains such conditions as will render the seller liable for the perishing

of the goods after shipment, or makes the performance of the contract conditional on the safe arrival of the vessel, or which vests the buyer with an option to accept the goods according to the contract or according to the pro-forma delivered to him at the time of contracting, shall neither be a CIF nor a FOB sale, but shall be deemed to be a sale conditional upon delivery at the place of arrival.'

In a CIF contract, the documents which must be tendered by the vendor to the purchaser will include a bill of lading. However, the contract may stipulate for tender of a delivery order or give the vendor the option of tendering a delivery order. It has been recognised, since the English case of *Re Denbigh Cowan & Co and R Atcherley & Co* [1921] 90 LJKB 836, that the mere substitution of a delivery order for a bill of lading under the terms of the contracts does not impart any obligation to deliver the actual goods, so as to prevent the contract from being a true CIF contract. Nevertheless, in another English case, *The Julia* [1949] AC 293, a contract for the sale of rye 'CIF Antwerp' gave the seller the option of tendering bills of lading or delivery orders. The seller shipped the rye in bulk and tendered a delivery order in respect of a quantity smaller than the entire shipment. This order was directed to the seller's agent in Antwerp. Accordingly, it was held that the contract was not a CIF contract but one for the delivery of the goods in Antwerp. As the goods were not so delivered, there was a total failure of consideration. Here it can be said that if the seller in the *Julia* case had chosen to tender a bill of lading, he would have performed his obligations and it would have been a CIF contract.

Further, if a contract gives the purchaser the option of tendering documents or goods, it is not a CIF contract, so the seller is not bound to tender the documents. A true CIF contract does not give the seller this option; the seller must tender the documents and cannot perform by instead tendering goods alone.

Conclusion

In light of the above, it can be concluded that under a CIF contract the purchaser cannot refuse the documents and demand from the vendor the actual goods. Nor can the vendor withhold the documents and tender the goods. Furthermore, the performance of a CIF contract is fulfilled by delivery of the documents and not by the actual delivery of the goods by the vendor. Accordingly, it has been argued that a CIF contract is not a sale of goods but a sale of documents. As a result, the feature of an ordinary CIF contract is to be fulfilled by delivery of the documents and not by the actual physical delivery of the goods by the vendor. On the other hand, it could be argued that although under CIF contracts shipping documents are very important for the performance of these contracts, CIF contracts cannot be deemed as a sale of documents. Otherwise Book Two, Part Two, Chapter Two of the Commercial Transactions Law, which deals with the 'certain types of commercial sales' including CIF contracts, would not govern such contracts.