TALLINNA TEHNIKAKÕRGKOOL

Legal aspects of
SUPPLY CHAIN MANAGENT I

Basic knowledge of international goods purchase and sale agreements and risks' management

JÜRI SUURSOO

Estonia Latvia Russia
ENPI cross border cooperation programme
part-financed by the European Union
united by borders

This translation of book "Tarneahela haldamine I" has been produced with the financial assistance of the Estonia – Latvia – Russia Cross Border Cooperation Programme within European Neighbourhood and Partnership Instrument 2007 – 2013. The contents of this document can under no circumstances be regarded as reflecting the position of the Programme, Programme participating countries, alongside with the European Union.

This study material has been prepared in English as a translation of book "Tarneahela haldamine I" in the framework of programme "**Estonia - Latvia - Russia Cross Border Cooperation Programme within European Neighbourhood and Partnership Instrument 2007 - 2013**" through project, "Logistics and Overland Transport Network for Training 'Blue Collars'" in order to increase the study materials for students studying in the field logistics.

Estonia - Latvia - Russia Cross Border Cooperation Programme logo

Logistics and Overland Transport Network for Training "Blue Collars" logo from acronym "LogOnTrain"

Estonia – Latvia – Russia Cross Border Cooperation Programme within the European Neighbourhood and Partnership Instrument 2007-2013 financially supports joint cross border development activities for the improvement of the region's competitiveness by utilising its potential and beneficial location on the crossroads between the EU and Russian Federation.
The Programme web-site is www.estlatrus.eu.

Foreword

This teaching material has been compiled to provide students of applied higher education establishments with basic knowledge of supply chain management. It is meant primarily for the students of transport and logistics, but can be beneficial for students of other specialties, related to the field. The material can also be used by forwarders and shipping agents as a manual to refresh knowledge in this field. The teaching material contains references to legislative acts or other backup materials, providing thus additional information for finding and making use of them. The material consists of two parts and contains four topics:

- Agreements, including international contracts
- Risks and insurance, the ways of managing supply chain risks
- Freight and transport contracts and documents
- The basic principles of customs affairs, the EU customs regulations
- The first two topics are included in the first part.

The compiler is grateful for all the remarks and questions, which might emerge while reading the teaching materials.

Respectfully

Jüri Suursoo
Compiler

Table of content

1. Introduction

Term "manage" means to control, administer [1] and gives us direction for specifying the definition and understanding this study material. On the other hand this term in Estonian everyday language has often been confused with the term "control". There is no explicit definition of the latter term in the Dictionary of Standard Estonian (ÕS). In order to recognize and describe the difference between management and control, we follow the approach which has been promoted in Estonia by Ülo Vooglaid in his management theory presentations and publications[2]. The same approach is commonly taken into account also for the majority of relevant literature published in English and the term Supply Chain Management is usually translated into Estonian as "organisation of supply chain" and not word for word as "supply chain management". This leads to the understanding that the term management can be handled in two ways: management in a broader sense as organising, which includes different activities, and management in a narrower sense where it marks only process control. Based on the above-mentioned approach, we depict the supply chain management area in the following figure.

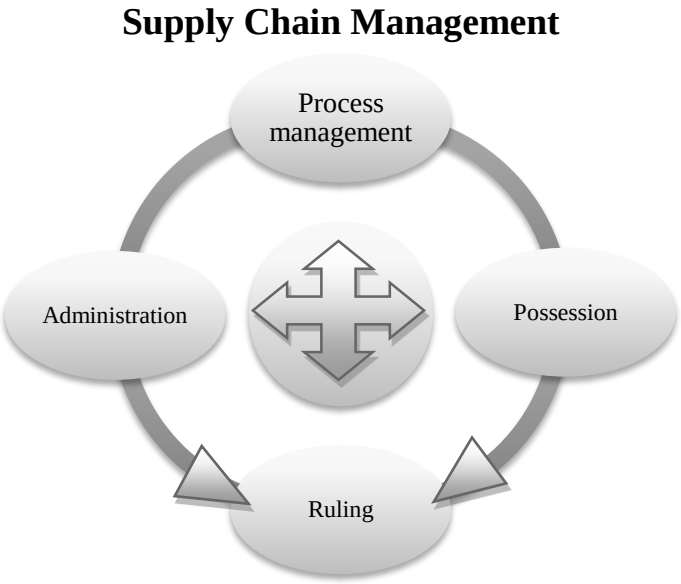


Figure 1 Elements of supply chain management

The supply chain management (or process management in broader sense) is formed by four strongly integrated principal activities and additional activities based on their mutual influence.

Explanatory description of the content of these elements:

[1] The Dictionary of Standard Estonian (ÕS), p. 167

[2] Vooglaid Ülo Juhtimissüsteemide morfoloogia ja dialektika (1986) (In Estonian) (Morphology and dialectics of management systems)

1. **Process management** According to the views of the above-mentioned approach, only processes can be managed. Hence the processes of supply chain can be objects of management.
2. **Ruling.** The object of ruling can be people, or in the context of supply chains, people working in various links of the system. Employees are not being managed but in a legal environment, they are motivated or punished, etc. Ruling belongs to the human resources area.
3. **Possession.** The object of possession can be assets which the system operator can use. Such assets can be items (e.g. tools) or funds (e.g. money and receivables). Assets can be possessed or leased and borrowed.
4. **Administration**. Administration means locating all organisation elements into legal space or determining the framework based on laws in order to organise supply chains. Administration is the main topic in this study material.

Administration is closely related to other elements. This will elicit some generalisations in discussion. Each chapter highlights different aspects; for example when we talk about carriage contract, the relation between management and administration is taken under close examination. See the following figure.

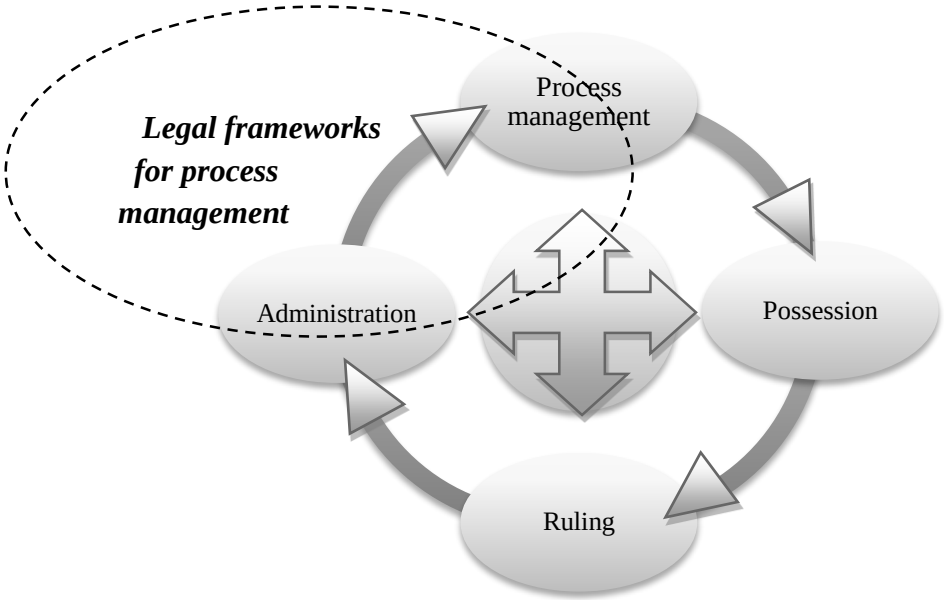


Figure 2. The impact of administration on process management.

Relations between administration and possession can be similarly depicted under the topic of risk management and insurance.

In order to understand administration better, we need to take into account all facets of logistics. We have to pay attention to the goods (goods flow) as well cash and information flows and series of

other services which are needed for these flows to function.[3]. The aim of the study material is to give basic knowledge on the judicial area to supply chain managers, including suppliers, service providers, and system operators. The study material does not reflect legal interpretations and outlines only the main trends; hence it cannot be taken as legislative document and it cannot be used as the basis for interpretation of laws. The aim of the author has been to structure the text similarly to the background system in order to create an integrated approach which would take into account how different areas impact each other (e.g. technical possibilities, economic context, etc.). All things considered, the material is prepared primarily from economic and engineering/technical point of view and focuses on what the employees of that area must know about the management of supply chains.

2. International contract for sale of goods

2.1. International contract for sale in the form of an offer and acceptance

2.1.1. United Nations convention on contracts for the international sale of goods

International contracts of sale must follow the fact that different countries (or more broadly regions) have different business practices based on the peculiarities of the cultural background, different political and social environment, etc. The persons dealing with international trade must be ready to negotiate and establish rules and recommendations in order to harmonise understanding about business environment and practices. Such recommendations or rules are greatly generalised documents. One of these is Vienna Convention from 1980. *Riigikogu* of the Republic of Estonia ratified two international conventions concerning external trade in 1993:

1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention from 1958)[4]
2. United Nations Convention on Contracts of the International Sale of Goods (Vienna convention, 1980)[5]

Acceptance of these conventions means that Estonian exporters/importers can use the benefits of recognised international legal source and that the requirements of this legal source must be met.

Vienna convention is a **totally dispositive legal provision**, since the parties of the contract of sale i.e. buyer and seller can exclude application of the whole convention, or its single requirements if

[3] For more information about information object and its behaviour in systems and regularity of system development, see Transpordisüsteemide logistika ja ekspedeerimine (Transportation system logistics and forwarding) by Jüri Suursoo. Tallinn University of Applied Sciences 2010. (In Estonian)

[4] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Passed on 09.06.1958 RT II 1993, 21, 51 https://www.riigiteataja.ee/akt/13142474

[5] United Nations convention on contracts of the international sale of goods Passed on 10.04.1980 RT II 1993, 21, 52 https://www.riigiteataja.ee/akt/13142550

they agree so. At the same time the Vienna convention includes **one imperative clause the requirements of which the parties of the contract of sale cannot ignore even on mutual agreement.** This is the clause no 12 which deals with the oral form of entering into, modification or termination of the contract of sale, or any other declaration of intention concerning the contract. **If any of the countries of location of the commercial undertakings forming the parties have made a declaration when joining the Vienna Convention that this state recognises only the written form of entering into contract of sale, neither of the parties can derogate from this understanding.** At the same time the Vienna Convention itself recognises the oral form of entering into contract and other declaration of intention.

NB! Estonia ratified the convention by not recognising the oral form of entering into, modification or termination of contract of sale, offer, acceptance, or other declaration of intention.
This clause was repealed in 2002 (RT I 2002, 53, 336 – entry into force 01.07.2002)[6]
The above specified document consists of four chapters with 101 articles.

1. Sphere of application and general provisions (handles also the above specified)
2. Formation of the contract, which handles the procedure for concluding the contract (offer, acceptance, and obligations based on these)
3. The third chapter is rather ample and important: **Sale of goods**, which highlights the content of the contract, buyer and seller obligations, preparation of goods, delivery, transfer, payment, passing of risk and other actions related to the contract and accompanying obligations and responsibility. This part is the most ample one and it is in turn divided into:
    - Chapter I General provisions (Articles 25-29).
    - Chapter II Obligations of the seller (Articles 30-52) and it is in turn divided into three sections: (I) Delivery of the goods and handing over the documents; (II) Conformity of goods and third-party claims and (III) Remedies for breach of contract by the seller
    - Chapter III Obligations of the buyer (Articles 53-65) and it is in turn divided into three sections: (I) Payment of the price; (II) Taking delivery and (III) Remedies for breach of contract by the buyer.
    - Chapter IV Passing of risk (Articles 66-70).
    - Chapter V Provisions common to obligations of the seller and of the buyer (Articles 71-88) and this is in turn divided into six sections: (I) Anticipatory breach and instalment contracts, (II) Damages, (III) Interests, (IV) Exemptions, (V) Effects of avoidance and (VI) Preservation of the goods.
4. Final provisions (Articles 89-101).

Next we handle the course of conclusion of contract according to the second part of the convention (Articles 14-24).

2.1.2. Conclusion of contract in a form of an offer and acceptance

[6] https://www.riigiteataja.ee/akt/174795

Conclusion of contract in a form of an offer and acceptance is a common international practice. The seller (or a buyer) submits an offer to another party (acceptor). The acceptor sends its accepting response (acceptance). At the moment when the offeror receives the response, the contract of sale is concluded.

The Vienna convention regulates very accurately the offer and the acceptance. However, there is still one risk based on the definition of an offer:
"...1. A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for fixing the quantity and the price…" [7]

Definition of an acceptance:
"1. A statement or other conduct by the offeree indicating assent to the offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.[8]

It can be concluded from this definition that unexpectedly to one or even both parties, an international contract of sale can be concluded, without fixing rather significant obligations of the parties.
For example, the goods and the price are fixed but there is no delivery date, not to mention other important details like fixing the delivery point or passing of risk. This is an extreme example but after joining the Vienna Convention, such situations may occur.

Figure 3 shows the course of concluding the contract. The offeror sends its offer to a specific person. If the acceptor agrees with the conditions of an offer, he sends its assenting response to the offeror. At the moment the offeror receives the response, the contract of sale is concluded between the parties and must be performed by both parties.

Before explaining the counter-offer indicated in the lower part of the scheme, let us look at the provisions of Vienna Convention about an offer and acceptance.

[7] United Nations Convention on Contracts of the International Sale of Goods (Vienna convention, 1980 – Article 14)
[8] United Nations Convention on Contracts of the International Sale of Goods (Vienna convention, 1980 – Article 18)

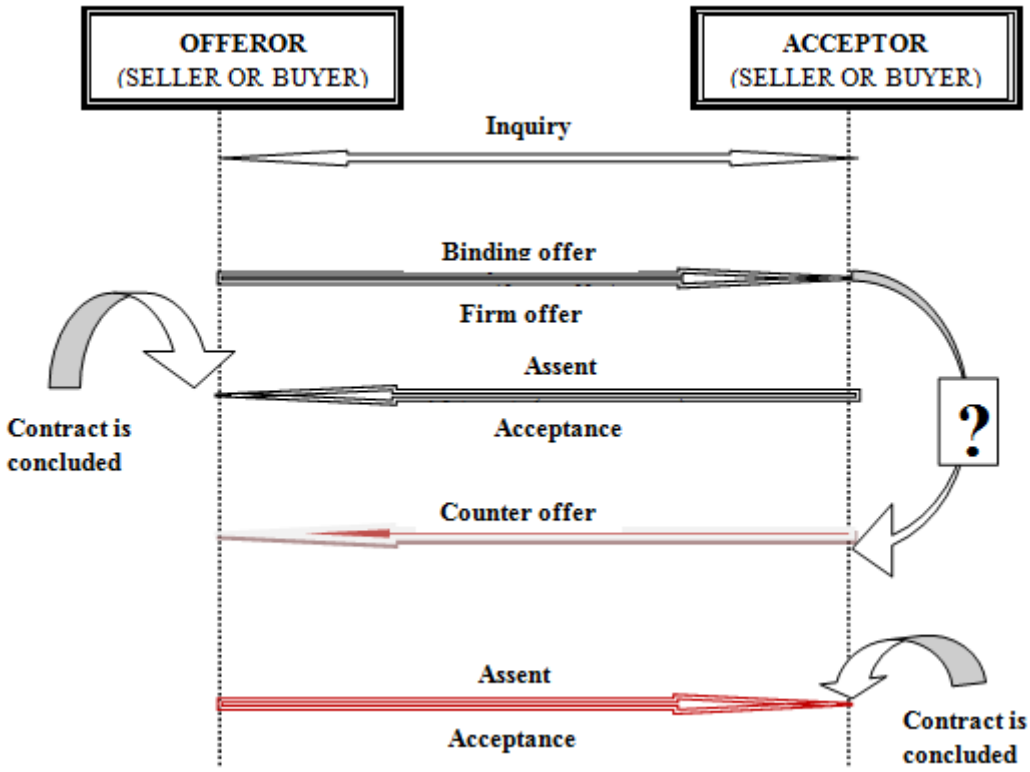


Figure 3 Conclusion of contract in a form of an offer and acceptance

2.1.3. Offer requirements

In addition to the above definition of an offer, the Vienna Convention provides several requirements (Article 14). A proposal is not an **offer** if it is addressed to the circle of unspecified persons. This is an invitation for making an offer. Hence displaying goods on a show-case does not equal to making an offer.

Hence offer is a proposal which

1. is addressed to one or more specific persons.
2. is sufficiently definite, i.e. goods, the volume/price, or procedure for fixing these details have been defined.
3. expresses the intention of an offeror to become bound in case of assent with the transmitted proposal.

An offer **takes effect** when the offeree receives it.

An offer can be revoked with offeror's notice, on condition that the offeree receives the notice before or at the same time with the offer. This way also an irrevocable offer can be revoked.

An offer can be **revoked** on condition that the
revocation notice reaches the offeree before he has dispatched an acceptance.

An offer **cannot be revoked** if it indicates that it is irrevocable (e.g. in case stating a fixed time for acceptance) or if it was reasonable for the offeree to rely on the offer as being irrevocable.
An offer becomes invalid after the offeror has received a note from the offeree about its revocation.

2.1.4. Acceptance requirements

An acceptance is a statement or other conduct of an offeree indicating assent. Other conduct means for example delivery of goods or payment of invoice, which is based on the offer or previous practice of the parties. Written order is deemed as an acceptance. Inactivity of the acceptor does not amount to an acceptance.

Hence the acceptance **takes effect** at the moment the offeror has received assent from the offeree. It is not effective if the indication of assent does not reach the offeror within the fixed time or if the time has not been fixed, during a reasonable term considering the circumstances of the transaction and speed of means of communication employed by the offeror. By virtue of the offer or as a result of practices which the parties have established between themselves, the offeree may indicate assent by **performing an act**, such as dispatch of the goods or payment of the price, without notice to the offeror. Such acceptance becomes effective at the moment of performance provided that the act is performed during the time specified in the section above.

When an offeror has fixed the acceptance **time** via mail or e-mail, the time starts from the date indicated in the mail or if no time is indicated, from the date on an envelope or e-mail time stamp in the database, i.e. the calculation of time starts from the moment the offer reaches the offeree. **Official holidays or non-business days** are included in calculating the acceptance period. If the period of notice of acceptance falls on the official holiday or non-business day, the period is extended until the next following business day. A **late acceptance** is nevertheless effective if the offeror dispatches without delay a confirming notice to the acceptor. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances which prove that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror dispatches a note to the acceptor that he considers his offer as having lapsed.

An acceptance may be **withdrawn** if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.
A contract **is concluded** at the moment when the acceptance of the offer becomes effective in accordance with the provisions mentioned.

2.1.5. Counter-offer

A **reply to an offer** which contains additions, limitations, or other modifications is a **counter-offer.**

If additional conditions which have been presented in a reply do not alter materially the terms of the offer, this reply is deemed as an acceptance, unless the offeror, without delay, objects to the discrepancy or dispatches a written notice accordingly. In such case the terms of the contract are the terms of the offer, including the modifications presented in the acceptance.

Additional or altered terms concerning, among other things, the price, payment, quality and quant ity of the goods, place and time of delivery, extent of one party's liability to the other, or the settlement of disputes, are considered to **alter the terms of the offer materially**.

Like shown on Figure 3, the **initial acceptor** becomes an offeror when changing materially the conditions of an offer and an original offeror becomes an acceptaor in case he accepts the changed conditions and also dispatches the relevant note of assent. The contract is deemed as concluded from the moment the submitter of a counter-offer receives the acceptance.

2.1.6. Submission of an offer

The above mentioned is a reference from articles 14 to 24 of the Vienna Convention which provides rather thoroughly all necessary requirements about the offer and acceptance. In international trade, there are certain set practices which indicate how the offer should be composed. Based on practices, an offer should contain following information:

1. Name of the legal act, which is the reason for making an offer, e.g. to conclude a contract of sale.
2. Names of the parties of a contract to be concluded, i.e name of an offeror and offeree.
3. The object of the offer or concluded contract.
4. Delivery deadline.
5. Price of goods or method for fixing the price.
6. Delivery terms.
7. Payment terms.
8. Reference to general terms and conditions of the contract – fines for delay, warranty obligations, force majeure, resolving of discrepancies.
9. Special conditions: bank guarantees, inventory, options, alternatives, etc.
10. Offer validity period.
11. Date and signature (in case it is deemed as necessary in given context, e.g. in case of e-mails).

It is quite common to submit an offer as a letter (a fax, an e-mail) with an attached pro forma invoice. In this case the letter informs that the contract of sale with an offeree is required to be concluded on delivery and payment terms indicated on the pro forma invoice.

Offers and acceptances are usually changed in written (via fax or e-mail). The content of contracts concluded in such way is very short. This gives always rise to the question, how to ensure that an international contract of sale concluded in such "short form" would be precise and comprehensive enough? Despite the short form, all important obligations and rights of the seller and buyer have to

be fixed and all obligations and distribution of obligations have to be fixed in a way which allows the contracting parties unambiguous interpretation.

2.2. Formation of export-import contracts

Sales deal must not necessarily be easily feasible. Figure 4 shows an international sales transaction with its entire complexity and at the same time simplifies it to some extent. The contract parties, exporter (seller) and importer (buyer) are certainly primary. In addition also several institutions and organisations needed for performance of the contract have been indicated. The lower part of the figure shows the flow of goods from the seller to the buyer i.e. the supply chain. This includes all main participants: carriers, issuers of export or import licenses and necessary certificates, customs of both parties, and also the intermediary of goods delivery – forwarder. This chain involves delivery of goods i.e. transfer of goods from the seller to the buyer.
Payments move in the opposite direction, i.e. from the buyer to the seller. This is so-called payment chain or cash flow. The diagram shows the main participants of the sales transaction. Delivery as well as possible ways of making payments are not shown. For example delivery, i.e. transfer of goods may take place at any point of the goods movement chain, depending on how the parties of the contract of sale agree. Also the modes of transport may vary, from road transport to most complicated combined carriages (intermodal technologies, etc.).
Also the payment chain may include very different methods of payment (buyer's prepayment, spot payment, seller's commercial credit) or forms of payment (open account, different version of cash on delivery, documentary collection, and different possibilities of documentary letters of credit).

Concerning the supply chain, it is usually important to fix

1. Used mode of transport and party being responsible for conclusion of the carriage contract.
2. Delivery place, shipping policy and delivery time.
3. The moment when the risk of loss and damage of goods passes from the seller to the buyer. Usually the risk passes at the same time with delivery, i.e. transfer of goods.
4. Moment of passing of the costs related to goods from the seller to the buyer.
5. Party responsible for performing export, import, and customs formalities of transit.
6. Procedure of cargo loading, reciprocal notices to be communicated.
7. Documents to be issued for certifying delivery.
8. Obligations of the parties for insurance of cargo.
9. Party paying the costs of any kind of control operations or inspections needed.
10. Seller's obligations in respect of packaging and labelling.
11. Obligations concerning mutual assistance, and other.

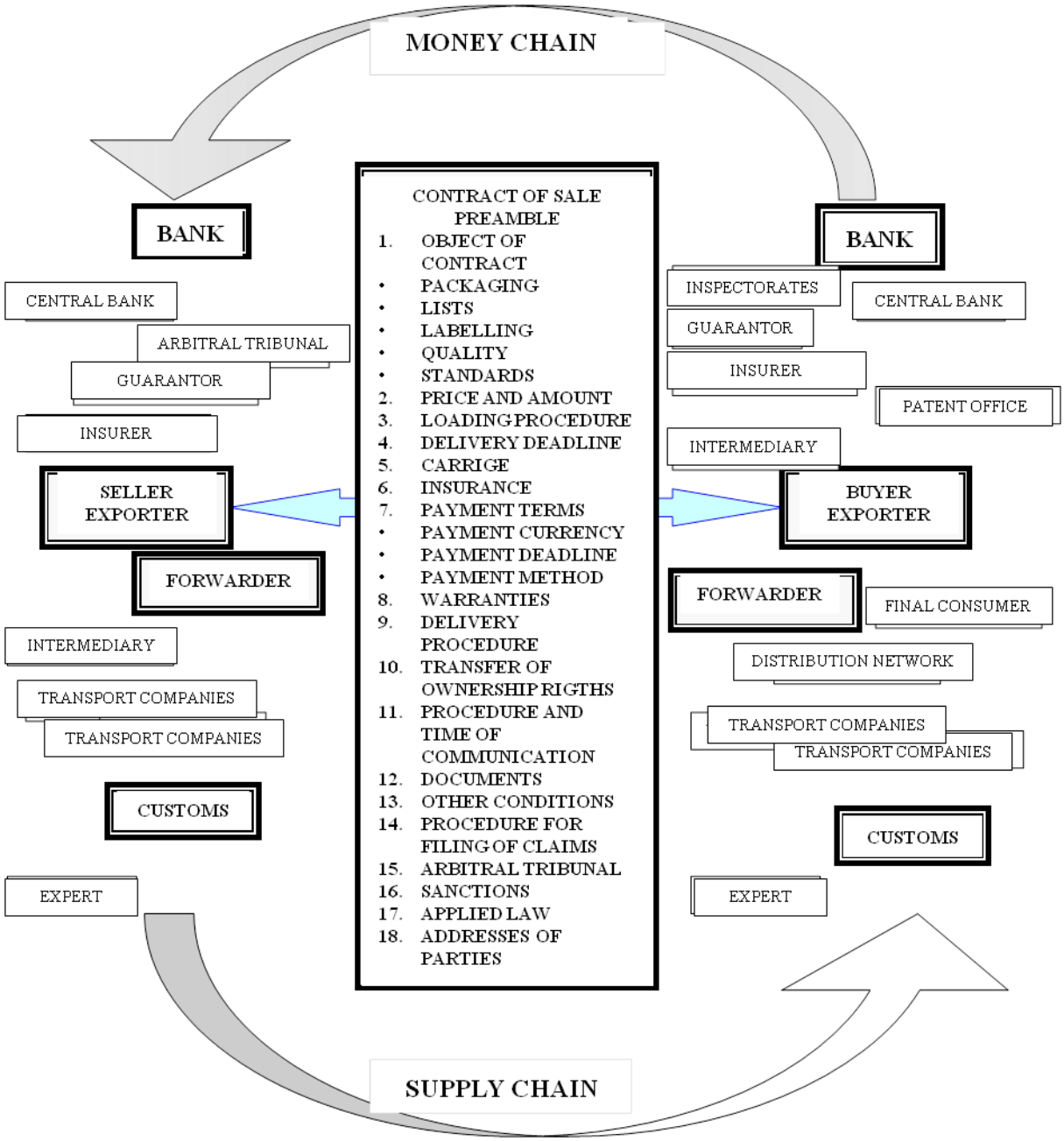


Figure 4 Content of international contract of sale and involved influencers.

In case of the **payment chain**, the parties must primarily fix the following:

1. Price of the goods, whether it is a fixed price, so-called pending price, sliding price or price to be determined later.
2. The banks intermediating the payments and time of payments (fixing of payment time).
3. Payment currency.
4. Applied payment method (open account, documentary collection, documentary credit).
5. Means of payment (checks, bill of exchange).
6. Supplementary payment guarantees deemed as necessary, and more.

As a rule, the sales transaction is performed when the buyer receives goods and seller receives payment for delivered goods and this all happens as the parties foresaw it and were able to reasonably expect when concluding the contract. As reality may be different from what was expected due to the complexity of the whole process and the numerousness of participants in the process, a proper contract should also foresee the procedure for resolving disputes. In respect of that, the following should be fixed:

1. Procedure for filing claims.
2. Sanctions.
3. Circumstances related to force majeure.
4. Arbitral tribunal and jurisdiction.
5. Applied law.
6. Special conditions for termination of a contract.

In order to prepare a perfect contract, the parties must fix very many moments regarding goods delivery and payment chain as well as procedure for resolving disputes. It is a rather long process to break all that down in one contract. It is even more complicated to foresee all the situations occurring during performance of the contract for which the obligations and rights should be fixed.

One of the most common measures for simplifying the complexity is to use Incoterms norms issued by the International Chamber of Commerce.

2.3. Delivery terms[9]

2.3.1. General information about delivery terms

Transporting the goods from one country to another includes several risk factors. Goods may get lost or damaged, delivery may be delayed or not arrive at all due to misunderstanding of obligations by the other party. Although the parties act diligently, a conflict may arise from obligations, risks, or distribution of costs as the commercial practices in different countries are not the same.

Unified delivery terms Incoterms try to solve such problems. Incoterms are rules prepared by the International Chamber of Commerce which determine the content of most common delivery terms in external trade. The aim of the terms is to achieve unified interpretation globally. If the parties of the transaction use namely the Incoterms terms in their commercial contract, they may rely on similar interpretation of things and the transaction will be realised so that both parties are satisfied.

The first international rules of delivery terms were taken into use in 1936. Incoterms 1936 determined content of nine clauses. The delivery terms were updated in 1953, supplemented in 1967

[9] **Incoterms® 2010** *By the International Chamber of Commerce (ICC)* ICC Publication No. 715, 2010 Edition Publication in Estonian language EMI-EWT INCOTERMS 2010 Tallinn 2010.

and 1976 and updated again in 1980, 1990, and 2000. Delivery terms have been developed in two directions. First, until 1980 the terms were supplemented with adding of new terms (FOR, FOT, etc). From 1980 the development has been towards narrowing and harmonising. The last Incoterms 2010 version took effect on 1 January 2011. The number of delivery terms diminished from 13 to 11. Regarding the marine carriage clauses, the number of delivery clauses diminished from 6 to 4. The delivery terms also consider the options provided by electronic communication.

The delivery terms explain the **cost breakdown i.e. liability for cost**, passing the threat of damage from the seller to the buyer i.e. **liability** for goods, and activity obligations i.e. **operational liability** of both transaction parties - the seller and the buyer. In addition to the seller and buyer, the delivery terms do not bind the third party, e.g. the cargo carrier, who is bound by conditions of carriage or carriage contract. At the same time it must be noted that although legally the delivery terms do not bind third parties, it is reasonable enough to not to forget them also in transport contracts. This helps to take into account the intent of the buyer and seller and to realise operational obligations of parties as well as possible. Such practice is more and more followed in international practice i.e. the third parties are informed about the delivery terms.

2.3.2. Incoterms 2010 - delivery terms of international trade[10]

According to Incoterms 2010, the buyer influences the operations in the recipient's supply chain and mode of transport, when the delivery term is EXW, FCA, FAS, FOB, and it picks the transport operator. In case of CFR, CIF, CPT, CIP, DAT, DAP and DDP, the seller influences the supply chain operator and type of transport as payer for the goods by picking the best solution in his opinion. The set of Incoterms is meant for making business and it is compiled in order to clarify the confusion in delivery terms with harmonised clauses.

Table 1 Delivery terms used for all types of transport according to INCOTERMS 2010

Symbol	Definition	Seller's side explanation	Buyer's side explanation	Remarks
EXW	*Ex Works*	Fetched	Procured from factory	Seller-centred term, not recommended to be used in international trade
FCA	*Free Carrier*	Basic transport unpaid	Free carrier	Seller-centred term. Buyer is liable for supply chain costs, risks, operations
CPT	*Carriage Paid To*	Basic transport paid	Carriage paid to	Two point clause where the liability for cost and liability for goods are passed in different places.
CIP	*Carriage and insurance Paid To*	Basic transport and insurance paid	Basic transport and cargo insurance paid to	The same as CPT, but the obligation of the seller to insure cargo for the benefit of the buyer is added
DAT	*Delivered At Terminal*	Delivered	Delivered at terminal	Buyer-centred term. Available starting from 2011. Replaces DDU
DAP	*Delivered At Place*	Delivered	Delivered at place	Buyer-centred term. Available starting from 2011. Replaces DDU
DDP	*Delivered Duty Paid*	Delivered	Delivered and duty paid	Entirely buyer-centred. Involves high risks for seller. Complicated use.
In case of INCOTERMS 2000, available until January 2011				
DAF	*Delivered AT Frontier*	Delivered	Delivered at frontier	Replaced by DAP
DDU	*Delivered Duty Unpaid*	Delivered	Delivered, duty unpaid	Replaced by DAT or DAP

[10] http://www.eas.ee/images/doc/ettevotjale/eksport/incoterms2010.pdf (in Estonian)

Table 2 Delivery terms used only for marine transport according to INCOTERMS 2010

Symbol	Definition	Seller's side explanation	Buyer's side explanation	Remarks
FAS	*Free Alongside Ship*	Basic transport unpaid	Free alongside ship	Seller-centred term. Buyer is liable for transport costs, risks and operations
FOB	*Free On Board*	Basic transport unpaid	Free on board	Seller-centred term. Buyer is liable for transport costs, risks and operations
CFR	*Cost and Freight*	Basic transport paid	Cost and freight paid	Two point term where the liability for cost and liability for goods are passed in different places
CIF	*Cost, Insurance and Freight*	Basic transport paid	Cost, insurance and freight paid	The same as CFR, but the obligation of the seller to insure cargo for the benefit of the buyer is added
In case of INCOTERMS 2000 available until January 2011				
DES	*Delivered Ex Ship*	Delivered	Delivered ex ship	Replaced by DAP
DEQ	*Delivered Ex Quay*	Delivered	Delivered ex quay	Replaced by DAT

It is reasonable to use marine transport terms if the performance of sender's obligations which have been foreseen in the terms can be ensured. Hence it is reasonable on the transport of liquid bulk (tankers), solid bulk, dry cargo (dry cargo vessels) i.e. normally on tramp shipping. In case of intermodal technologies such as container transport and ro-ro transport, it is more expedient to use delivery terms used for all types of transport. The reason lies in the fact that the senders as well as recipients of goods cannot influence the processes happening in the port in case of processing intermodal transport units. For example, the container is received in the terminal, and also transferred in the terminal of the port of destination.

Delivery terms can also be classified as:

1. **Full liability terms,** where the seller or buyer is fully responsible for the goods and costs during the whole supply chain.
    - EXW Procured from the factory (from sender)
    - DDP Delivered, duty paid
2. **One point delivery terms**, where the costs and liability for possible damage or loss of the goods are passed from the seller to the buyer at the same place:
    - FCA Free carrier
    - FAS Free alongside ship
    - FOB Free on board
    - DAT Delivered at terminal

- DAP Delivered at place

3. **Two point delivery terms**, where the costs and liability for possible damage or loss of the goods are passed from the seller to the buyer in different places:
    - CFR Cost and freight paid
    - CIF Cost, insurance, and freight paid
    - CPT Carriage paid to
    - CIP Carriage and insurance paid to

Before version 2010 of Incoterms, the delivery terms were divided into four groups: E-, F-, C- and D group according to the first letter of the delivery term symbol. Each group had certain specific characteristics. According to the last version, we can describe such characteristics as follows:

- **EXW** is a term where the seller gives the goods to the disposal of the buyer at its premises. The buyer pays all costs, also costs in the country of origin, including the customs clearance costs in the country of origin.
- In case of delivery terms starting with letter **F** (FCA, FAS, FOB), the seller delivers goods to the carrier indicated by the buyer of goods. The delivery place is usually not far from the seller. The seller pays part of the costs in the country of origin, the buyer pays main freight costs and all costs in the country of destination.
- **In case of delivery terms starting with letter C** (CFR, CIF, CPT and CIP), the seller must conclude the carriage contract and in case of CIF and CIP the insurance contract. The seller pays the main freight costs to the place of destination indicated in the delivery term, the buyer pays costs in the country of destination.
- **In case of delivery terms starting with letter D** (DAT, DAP and DDP), the seller is responsible for all costs and damages until the point of destination indicated in the delivery term. In case of DDP also the custom clearance costs.

In order to get a better overview of delivery terms, see Table 3 which describes the allocation of costs and risks between the seller and the buyer according to INCOTERMS 2010. Table 3 reflects only the delivery terms used for all types of transport (7 terms).

The following official publications of International Chamber of Commerce must form the basis for use of delivery terms in practical international trade:

- **Incoterms® 2010** *By the International Chamber of Commerce (ICC)* ICC Publication No. 715, 2010 Edition or
- Official translation into Estonian EMI-EWT INCOTERMS 2010 Tallinn 2010.

Table 3 Summary table of INCOTERMS 2010 (used for all types of transport)

Delivery terms Incoterms 2010	Liability	Loading at seller's premises	Pre-carriage / pick-up carriage		Documents in export country	Customs declaration in country of export	Export duties	Loading at carrier's terminal	Cargo (goods) insurance*	Basic transport	Unloading at the terminal in the country of import	Customs declaration in the country of import	Import duties	Door to door delivery / distribution delivery	Unloading at buyer's premises	Other costs
EXW	costs	B	B	B	B	B	B	B	-/?(B)	B	B	B	B	B	B	B
	goods	B	B	B	B	B	B	B	-/?(B)	B	B	B	B	B	B	B
FCA	costs	S	S/B	B	S	S	S	S/B	-/?(B)	B	B	B	B	B	B	-/?
	goods	S	S/B	B	S	S	S	S/B	-/?(B)	B	B	B	B	B	B	-/?
CPT	costs	S	S	S	S	S	S	S	-	S	S	B	B	B	M/B	-
	goods	S	S	S	S	S	S	S/B	-	B	B	B	B	B	B	-
CIP	costs	S	S	S	S	S	S	S	S	S	S	B	B	B	S/B	-
	goods	S	S	S	S	S	S	S/B	B	B	B	B	B	B	B	-
DAT	costs	S	S	S	S	S	S	S	-/?(S)	S	S	B	B	B	B	-
	goods	S	S	S	S	S	S	S	-/?(S)	S	S	B	B	B	B	-
DAP	costs	S	S	S	S	S	S	S	-/?(S)	S	S	B	B	B	S/(B?)	-
	goods	S	S	S	S	S	S	S	-/?(S)	S	S	B	B	B	S/(B?)	-
DDP	costs	S	S	S	S	S	S	S	/?(S)	S	S	S	S	S	S/B	S
	goods	S	S	S	S	S	S	S	-/?(S)	S	S	S	S	S	S/B	S

* Goods in transit insurance requirement concerns only delivery term CIP and the seller is responsible for insurance. In case of all other delivery terms, insurance is possible and the decision is made by the party with commodity risks. Delivery terms do not require insurance.

2.3.3. Combiterms

Combiterms delivery terms are based on the same principles as Incoterms, however they specify the delivery terms in respect of topics where the Incoterms leave alternative options. Numerical code is added due to that. Combiterms classifies costs between the seller and the buyer. The set of terms was created in 1960s mainly following the need for collaboration between forwarding companies and in practise it is primarily used by logistics companies. Combiterms includes the transport chain and its different stages from the seller to the buyer connected with the table of allocation of costs. Combiterms usually relates to the valid version of Incoterms, however it can be interpreted more freely and leaves certain freedom for the entrepreneurs working in the logistics collaboration networks for agreements within the limits of free choices, e.g. when using free delivery term codes. It also allows to post the cost codes inside the main codes (groups). For example in case of the main code 550 (basic transport) we can determine the types of transport, transport routes, etc. with different codes and connect the Combiterms cost codes with accounting and finally use the received data for optimising the logistics expenditures.

Combiterms cost codes by main codes:

100 Loading at seller's premises
150 Pre-carriage
200 Contract of carriage / export forwarding
250 Trade documentation in country of export
300 Customs clearance in country of export
350 Export charges
400 Loading at carrier's terminal (terminal means cargo terminal, railway station, quay, wharf/port warehouse, or airport).
450 Transport equipment and accessories
500 Transport (cargo) insurance
550 Basic transport
600 Unloading at terminal in the country of import
700 Customs clearance in the country of import
750 Import charges
800 Door to door delivery / distribution delivery
850 Unloading at buyer's premises
900 Other costs

Combiterms delivery term codes

Combiterms delivery term codes contain either two or four alternative clauses by which the liability for cost is determined.

Costs are transferred from the seller to the buyer either at the seller's factory/warehouse or at the terminal when the seller has transferred goods to the possession of the first carrier = FCA.

The costs are transferred from the seller to the buyer at the named spot on the frontier of the consignment country, or at the named spot on the frontier of the country of destination, or at the named terminal in the country of import, or in buyer's warehouse/factory = CPT and CIP.

On the named frontier (duty unpaid) or at the buyer's warehouse/factory (duty unpaid) = DAP.

At the named terminal in the country of import (duty paid exclusive of taxes) or at the buyer's warehouse/factory (duty paid, exclusive of named taxes) = DDP.

Delivery terms suitable for all types of transport

001 EXW Ex works (named place of delivery)
002 FCA Free Carrier (seller's factory/warehouse)
005 FCA Free carrier (named terminal)
006 CPT Carriage Paid To (named frontier point in country of dispatch)
007 CIP Carriage and Insurance Paid To (named frontier point in country of dispatch)
010 CPT Carriage Paid To (named frontier point in country of destination)
011 CIP Carriage and Insurance Paid To (named frontier point in country of destination)
012 CPT Carriage Paid To (named terminal in country of import)
013 CIP Carriage and insurance Paid To (named terminal in country of import)
014 CPT Carriage Paid To buyer's warehouse/factory
015 CIP Carriage and Insurance Paid to buyer's warehouse/factory
016 DAP Delivered on board to (named port of destination)
017 DAT Delivered at quay to (named port of destination)
018 DAP Delivered on frontier to (named terminal in country of import)
019 DAT Delivered to (named country of import) duty unpaid
021 DDP Delivered to (named country of import) cleared not including (appointed taxes)
022 DAP Delivered to buyer's warehouse/factory, duty unpaid
023 DDP Delivered to buyer's warehouse/factory, cleared, not including (appointed taxes)

Delivery terms fit only for carriage on waterways

003 FAS Free alongside ship (in named loading port)
004 FOB Free on board (in named loading port)
008 CFR Cost and freight paid to (named port of destination)
009 CIF Cost, insurance, and freight paid to (named port of destination)

Cost allocation tables

In cost allocation tables, Incoterms 2010 delivery terms are combined with Combiterms cost allocation tables. The tables are prepared similarly to Incoterms cost allocation tables (see Table 3) in the form of a matrix.

2.3.4. Selection of a delivery term

Selection of terms depends a lot on how well the person in charge of selection knows the content of the terms. However, in order to be able to select the most appropriate delivery term for the situation, only knowing the content is not enough. Costs involved in the delivery terms regarding the transport as well as liabilities should be also taken into account. With these issues, forwarding companies can be of help. The best experts on insurance issues are the insurance companies dealing with transport insurance.

The selection of delivery terms depends as well on the purchasing and sales strategy the company has been introducing. A company who wants to use delivery terms and has taken an active role can obtain also economic gain when using the terms correctly. The company paying transportation chain costs (orderer) is able to control the process; the information about the delivery is not a plain obligation but gives also an opportunity to influence the course of events and through this, the logistic costs.

The products may influence sales strategy so that the goods sold without remarkable selling efforts do not demand added value. For example if in addition to products there is no need to sell service, such as freight, customs clearance in the country of destination, etc. Hence the seller-centred delivery terms like Ex Works, Free Carrier, FAS or FOB are chosen. This means the sales strategy is passive, the risks are not taken and there is no opportunity to organise the transportation chain actively and manage costs.

When concluding the contracts of sale, the delivery volumes influence the use of delivery terms as well. The transaction party with larger volumes can most probably get the most favourable transport price which leads to the best final result.

When selecting the delivery terms, it is essential to think about payment conditions, loading / transport conditions and their compatibility, so that the delivery condition, payment condition, and loading/transport condition would be consistent and there would be no interruption in information flow nor liabilities during the transaction.

In brief we can describe the factors influencing the selection as follows:

- Knowledge of delivery terms and their content i.e. user competence.
- Sales object (products)
- Sales strategy (as well as buying strategy).
- Delivery volumes and type of transport.
- Payment conditions and required documentation based on that.
- Supply chain geography, etc.

2.4. Conditions of payment

2.4.1. General information about financial conditions of contract of sale and the terminology

The aim of international settlements is to transfer the transaction payments from the payer to the payee according to the agreed contract terms and conditions.

In logistic systems it is described as cash flow. Cash flow in logistics is the targeted movement of funds circulating in the logistics system and between the logistics system and external environment with the aim to ensure the movement of product flows and accompanying services and information. Cash flow must be understood as funds containing also securities (check, bills of exchange, bonds and other obligations for the benefit of the seller); goods exchange, settlement of accounts or clearing account, etc. There are also different ways of selling on and paying off credit such as cash on delivery, documentary collection and documentary credit. This chapter describes the ways and methods of practical management of cash flows. The cash flow management should consider the following:

- Financial opportunities are not unlimited, as a rule they are limited, hence also the entire process has certain limits.
- Money has its price (expressed by loan as well as deposit interests).
- Cash flow is an object of increased attention and hence requires special means of protection.

Modern international trade demands a proper macrologistical (financial intermediation) system. This means financial institutions like banks and insurance companies.

Money. Financial flows primarily mean targeted flow of cash, also the financially guaranteed means of payment like check, bill of exchange, etc. In order to characterise money, its functions and properties must be observed. Three functions of money are usually referred to:

- A medium of exchange
- A measure of value
- A store of value

In addition to the above specified three functions, the more important properties of money are described. These are:

- Divisibility
- Portability
- Stability
- Durability
- Difficulty of counterfeiting

Currency. The term currency means foreign currency (The Dictionary of Standard Estonian1999 *standard, also foreign currency*). Mutual exchange rates of different currencies, hence the prices of currencies, are formed in the currency markets based on the relations between demand and offer. For example the exchange rate of euro towards other currencies can be followed in the homepage of

European Central Bank.[11] It is also possible to follow longer timelines and hence get an overview of volatility of currencies or, vice versa, their stability and so forecast possible exchange rate risks.

Historically, the development of financial systems of countries has been long. During the last hundred years, the development can be characterised with the following keywords:

- Gold standard (until WW I)
- Gold Exchange standard (until the end of WW II)
- Fixed exchange rates system i.e. Bretton Woods system (until 1973) Fixed Exchange Rates
- Floating Exchange Rate
- European Monetary System - Snake (until 1993) where the upper and lower limit is limited (+2.25 %)

Some additional terms

- **Direct quotation.** Quotation of exchange rates from the ratio of purchase-sale rates of currencies in the market.
- **Indirect quotation,** used for expressing of exchange rates through some most commonly used currency (e.g. via € or USD).
- **Spread** between purchase and sales rate, this is the difference between the purchase and sale rate of currency.
- **Spot rate**, binding exchange rate in currency's contract of sale, settled for a certain transaction.
- **Value day -** a day when the transaction must be completed.

Movement of means of payment in a logistics system and between the system and external environment is regulated with contracts. All essential financial conditions are handled in the contracts.

2.4.2. Financial conditions of contract of sale

2.4.2.1. Due date - the following options can be chosen under this condition:

- **Prepayment or advance payment** where the payment for goods is made before its dispatch to the buyer. Often the term cash with order (CWO) *is* used under this condition.
- **Spot payment** – paid on the spot when goods are transferred to the buyer.
- **Commercial credit** – when a deadline is given for payment for goods (after the dispatch of goods or from the moment of receiving goods.)

2.4.2.2. Currency conditions of contract of sale

Will be implemented when sales terms and conditions foresee the payment in foreign currency. The following is determined in the contract:

1. **Price and currency of price.**
2. **Payment currency.**

[11] http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html

3. **Foreign exchange condition** fixes the exchange rate or the conditions for determining the rate, like value day, on the basis of which bank the exchange rate would be determined, etc. In case it is not done, it is necessary to determine the protective conditions against foreign-exchange risk. There is no need for foreign-exchange conditions and protective conditions against foreign exchange risk if transactions will be performed in associated currencies. For example the contracts by Estonian companies with countries whose currency rate is fixed with EUR.

4. **Protective conditions against foreign exchange risk.** Currency adjustment

Protective conditions against exchange rate change must reduce the risks of all contracting parties. Exchange rate may change to quite a large extent in a short-term perspective. To foresee potential trends in exchange rates and the size of variance, it is reasonable to follow the dynamics of the change of observed currency (e.g. databases of European Central Bank enable to follow behaviour of different currencies during quite a long period.[12] This is expressed through the **currency adjustment factor CAF.** For example if the payment conditions in contract of sale foresee payment in US dollars and commercial credit, in case of a three week commercial credit the dollar's rate would change by 4.52 % (last month fluctuation was taken into account), hence more favourable by specified % for the seller and more expensive for the buyer by the same %. In order to avoid such risks, the protective conditions are used in contracts of purchase and sale which enable to divide the risks between the purchaser and seller fairly. Such protective condition may be **currency clause:**

1. The attempt can be made to enter the currency clause to the contract of sale to bind the price of the transaction with pre-determined rate level.
2. This clause can be unilateral when only one transaction party can get compensation in transaction price, or mutual which limits the foreign exchange risk of the buyer but also takes into account the foreign exchange risk of the seller.
3. The currency clauses usually determine the allowed fluctuation interval of the exchange rate either in percentage, or a certain highest and/or lowest exchange rate.

In case the foreign exchange risks are not reflected in the contract, the contracting parties shall bear the risk management. . In that case one can just hope for good luck and use the spot transactions for procuring the currency necessary for payments. In case of spot-transactions, the purchasing-selling of currencies takes place on the same day for the customer and the clearing between banks takes place during two days from performance of transaction i.e. on a value day. In some rare cases the value day of the transaction can be the same or the next bank day. Transaction's value day is a conversion day.

However, the best result can be achieved by well-informed activity of the contract parties in management of foreign exchange risks and one of the many possibilities to reduce the foreign exchange risks is **selection of contract currency:**

- Currency of the transaction is decided in the contract of sale.

[12] http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html

- Selection of currency must also consider the interest rates of the currency. When the claims are in low interest currency, they can be financed taking the low interest loan in the same currency and managing so the foreign exchange risk.
- Currency accounts. The accounts can be used for organising the cash movement, investment and preservation of liquid assets and management of foreign exchange risks. The used account types are:
- Demand currency account
- Foreign currency savings account
- Foreign currency fixed deposit

An alternative would be **forward transactions** in case of which it is possible to buy/sell previously agreed currency amounts with an agreed rate in the future. Forward transaction ensures against possible foreign exchange risk in the future. Forward is a binding contract for both transaction parties (to the bank and the party concluding a contract). That type of transactions is primarily meant for importers. Forward rate is affected by:

- the rate at the moment of entering into contract
- interests of contract currencies
- length of forward.

A third possibility includes **currency options.** A currency option gives the right but does not involve obligation to exchange a certain amount of currency to another currency with an agreed rate at the agreed due term. A possessor of the option has then the possibility to choose whether to use the option rate or the market rate at the moment of performance of a transaction. Currency option is bought and premium is paid for it which can be compared to insurance premium. Option rate, option length, historical volatility and interest difference of currencies influence the amount of the payment. Such kinds of transactions are primarily meant for the recipients of currency or exporters.

In addition to the above mentioned opportunities, there are several different ones, such as:

- Swap transaction is a combination of spot and forward transaction. It means that at the same moment two transactions are agreed upon: The client buys one currency and sells another and at the same time agrees that at a certain moment of time in the future he performs an opposite transaction with the currently fixed rate. In case of a swap transaction the customer gives one type of currency for a certain period to the bank and receives instead another type of currency for the same period. Swap's price depends on the difference of interest rates of currencies and length of the swap.

- **Interest swap.** When a company makes decision about especially long-term financing, it tries to choose possibly favourable loan currency and interest payment period towards financing and its currency situation. In case of interest swap it is agreed about swapping payment of interests, e.g. fixed interest rate against floating interest rate or vice versa.

- **Interest option.** Interest option is a right, not an obligation to pay or receive interest with a previously determined size after the previously fixed period. The highest and the lowest interest to be paid or received can be agreed with the interest option.

- **Swap-option or swaption.** Swap-option is an option which gives the right but does not oblige to conclude a swap contract in the future for a certain period and a previously agreed interest. For the right to make a swap (i.e. interest or currency exchange contract), the premiums are paid, the amount of which is affected by validity period of option, length of swap contract period, and the revenue curve and volatility of that period.

- **Forward rate agreement (FRA).** FRA is a contract between two parties which fixes the rate of interest to be paid or received on an obligation beginning at a future start date. FRA protects against the interest fluctuations in the future. Transaction parties agree the interest rate of the loan given at a certain point in the future (FRA due term).

2.4.2.3. Means of payment

In foreign trade, the following means of payment are used:

- **Money.**
- **Cheque** is a security with which the drawer orders the mandatary (payer) from the credit institution to pay unconditionally a certain amount of money on the payment date indicated on the cheque. In Estonian legislation, the cheque is reflected in Chapter 48 of the Law of Obligations Act[13]
- **Bill of exchange** is a temporary substitute of money and is paid by its issuer at an agreed period of time. Bills of exchange can be a **draft** or a **promissory note**: In Estonian legislation, the draft is reflected in Chapter 47 of the Law of Obligations Act[14]

Cheque must include the following information:

1) The term "cheque" in the language of the instrument.
2) An unconditional order to pay a specific sum of money.
3) The name of the drawee of the cheque.
4) The place of payment;
5) The date and place of issue of the cheque.
6) The name and signature of the drawer.

---

[13] **Law of Obligations Act is passed on 26.09.2001 RT I 2001, 81, 487 entry into force 01.07.2002** Chapter 48 Cheque §§979 to1004. (chapter consists of four divisions Division 1 General provisions §979 to 986, Division 2. Transfer of cheque §987 to 990, Division 3. Payment §991 to 999 and Division 4. Claims in event of non-payment of a cheque §1000 to 1004
https://www.riigiteataja.ee/akt/108072011021

[14] **Law of Obligations Act passed on 26.09.2001 RT I 2001, 81, 487 entry into force on 01.07.2002 Chapter 47** Bill of exchange consists of seven divisions: Division 1. General provisions §925 to 939, Division 2 Transfer of bill of exchange §940 to 947, Division 3 Aval §948 to 949, Division 4. Acceptance of draft §950 to 957, Division 5. Payment of bill of exchange § 958 to 961, Division 6. Protest of bill of exchange §962 to 969 and Division 7. Claims Arising from Non-acceptance or Non-payment §970 to 978 https://www.riigiteataja.ee/akt/108072011021

In international settlements it is possible to use the foreign currency cheque as means of settlement, which are divided into:

- Travel cheques.
- Bank cheques
- Private cheques.

In Estonia, paying with a cheque is not very common. Only small amounts are paid by cheque, usually only bank cheques are used, and the cheques are used on cash on delivery conditions. The latter is described under payment methods.

See also the opportunities provided by banks about possibilities to settle accounts by cheque. For example Swedbank: Terms and conditions for accepting foreign cheques for collection.[15]

Bank cheque is a cheque issued by the bank usually used for commercial operations. The cheque is usually signed by two officials of the bank with signatory rights. Cheque value and the currency are usually printed with numbers and words on the cheque. Cheques are paid by collection and based on that it takes much more time than in case of ordinary transfers (two to four weeks). The reason is that the cheque should be mailed to the issuing bank and only after that when the bank having issued the cheque has paid it, it will be paid to the submitter of the cheque. Service fees taken on payment of a bank cheque vary and depend on the number of correspondent banks used for mediating the payment of the cheque.

Private cheque is a cheque issued by a company or an individual for some bank to pay an amount indicated on the cheque to the recipient of the cheque on presentation of the cheque. Issuer's name and his bank name and account number are printed on a private cheque. Cheques cover is found out only when the cheque is presented for payment. Banks take such cheques only for payment by collection and in case the cheque lacks the cover, it is returned and the cheque handling costs are collected. It is not reasonable to use them in foreign trade transactions and they are also not used in Estonia.

Use of cheques in foreign trade has remarkably decreased after taking into use the data communication methods (SWIFT). Payee may still demand use of cheques. In that case it should be remembered that its payment is generally costly and a little bit more complicated when compared to payment order. Several banks redeem cheques only from their own customers.

The cheques are handled according to the law of the country having issued them. In Estonia the cheque related issued are handled in Chapter 48 of the Law of Obligations Act. Cheques related legislation is generally the same as in other countries. A cheque issued in Europe must be presented within 20 (twenty) days and a cheque issued outside Europe within 70 (seventy) days from the day of issuing the cheque. The cheque can be crossed (lined) with two same direction lines, in that case the bank pays the cheque by recording it to recipient's account.

The bank will withhold the cheque when there is formulation error, its currency is not quoted or it has other factors limiting use. The same procedure is used when the bank has reason to assume that

[15] https://www.swedbank.ee/static/pdf/private/d2d/payments/accepting_foreign_cheques_2011_01_01_est.pdf

the payment does not arrive during proper time after presenting the cheque. In that case the payment is recorded to customer's account only after the payment has arrived from abroad.

Bills of exchange. Bill of exchange is a temporary analogue of money and is paid by its issuer at an agreed period of time.
Bills of exchange can be a **draft** or a **promissory note**:

Draft is a **security** by which the drawer orders the mandatary (the drawee) to unconditionally pay a determinate sum of money to the person entitled on the basis of and specified in the draft on a due date specified in the draft. The drawer shall be responsible for acceptance of the bill of exchange and fulfilment (payment) of it, accordingly. Draft can also be issued in account of a third person (commission draft), it can belong for payment on order of the drawer, or the drawer itself can be the payer.

Promissory note is a **security** by which the drawer of the promissory note unconditionally undertakes to pay the amount of the promissory note to the person entitled on the basis of and specified in the note on the due date specified in the note.
The draft as well as the promissory note must contain the following information:

- The term "bill of exchange" in the language of the instrument
- An unconditional order to pay a determinate sum of money
- The name of the drawee
- The due date
- The place of payment
- The name of the person to whom or under whose orders the payment is to be made
- The date and place of the drawing of the draft
- The signature of the drawer

The promissory note shall contain the information and unconditional obligation of the drawer of the promissory note to pay the amount of the note.
Chapter 47 of the Law of the Obligations Act is valid for the bills of exchange. The bills of exchange are primarily used for commercial credit.

2.4.3. Payment method

The term payment method means the agreement about the way and form of paying the invoice. Settlements related to international trade usually use four different payment methods; with certain concession, also cash on delivery can be added as a fifth method:

- Open account or payment order
- (cash on delivery)
- Payment with a cheque
- Collection
- Documentary credit

Two (three) first ones are called as clean payments and last two ones as documentary payments. Payment method is agreed upon with the contract of sale. Domestic rules for use of payment methods are legitimised in Chapter 40 of the Law of Obligations Act[16].

At present organisation **S.W.I.F.T.** *[Society for Worldwide Interbank Financial Telecommunications, also abbreviation SWIFT (without dot-abbreviation)]* is used for transfer of money between banks. S.W.I.F.T. was established in May 1973 by 239 banks in 15 countries as a non-profit organisation owned by the member banks. The task was to establish international standards for communication between financial institutions. Hence it was necessary to achieve agreements between thousands of banks. SWIFT started operating in 1977. **BIC** (Bank Identifier Code) taken into use by SWIFT is recognised as an international standard for identification of financial institutions by ISO. **The aim** of SWIFT **is reliable, fast and confidential communication of financial messages** with small costs.

The format of SWIFT messages is standardised. Based on that, handling of large part of international payments can be automated which in turn accelerates handling of payments and reduces risk of human errors. On the other hand it requires high accuracy in presenting the data which should be located in proper places and presented correctly. Even the slightest inaccuracy or error in data may lead to delay in payments or not reaching the addressee at all. Correcting the mistakes is expensive and very time consuming process. In case of an issued payment order, the customer must present the following information to the bank:

- Payer
- Payee
- Payee's account no
- Payee's bank and address
- Payment currency
- Amount

Form of SWIFT message sets limits to the message. For example, the common Estonian letters with diacritics such as õ, ä, ö, ü cannot be used. Details of Payment cannot contain more than 140 characters, etc.

2.4.3.1. Open Account

Generally the open account has been and still is used in domestic settlements but currently it is more and more used as a payment method also in international trade. In its essence, an open account payment method means presenting an invoice to the importer, indicating for which goods and to

[16] **Chapter 40** of Law of Obligations Act **PAYMENT ORDER AND PAYMENT SERVICE** [RT I 2010, 2, 3 – entry into force 22.01.2010] Content of chapter:
1. Division 1 Payment order § 703- 708
2. Division 2. Payment service contract Subdivision 1 General provisions §709 – 721 Subdivision 2. Performance of payment service contract starting with § 724[1]. Authorisation of payment to 728 Subdivision 3. Liability §733' to 733[9] Subdivision 4. Obligations Related to Payment Instruments and Specifications for Low Value Payment Instruments and E-money § 733[10]. Obligations related to holding of payment instrument until 733[12] Subdivision 5. Scope of Application and Derogating Agreements §733[13] until 733[14]
4. Division 4 Settlement by letter of credit §747 to 753
5. Division 5 Settlement by collection §754 to 757

what extent the payment must be made. The importer fills out an international payment order in the bank and performs a payment. See Figure 5.

In case of an open account, the goods are sent from the exporter directly to the importer [2] with an accompanying documentation [4], and depending on the payment conditions, it is expected that the importer pays the invoice at once, or on an agreed date. [5]. The goods and the documents reach the importer before he has to pay for the goods. Payment for goods depends on the honesty and solvency of the importer. The whole transaction relies on mutual trust.

Payment with an open account gives minimum guarantees for the seller and the most advantages for the buyer among all the payment methods.

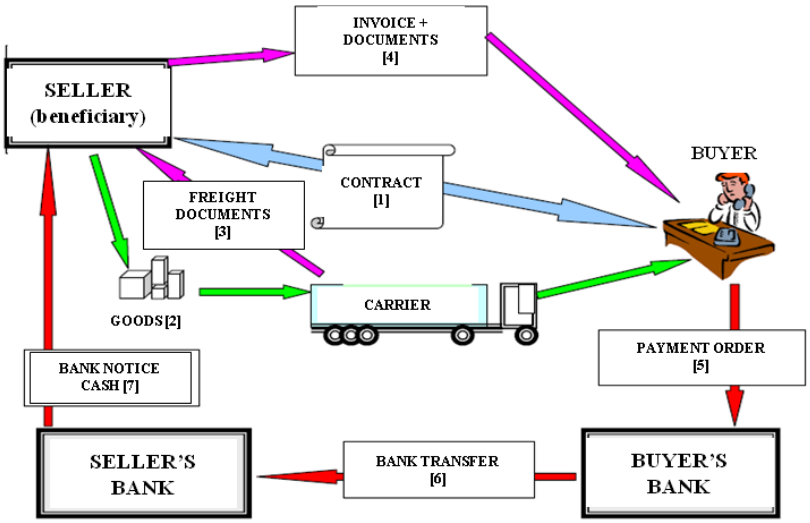


Figure 5 Open account payment method

Using an open account payment method **assumes** that:

- The economic and political situation in the location country of the buyer is steady.
- Everybody is familiar with business practices and customs in the location country of the buyer.
- Buyer is recognised and has a good reputation or there has been a long-term cooperation experience with the buyer.
- Buyer's economic status and solvency are good and checked.

Advantages of the open account payment method are:

- This method is fast and convenient to use and hence gives certain competitive advantage.
- There are less mediators, documents move directly from the seller to the buyer and confidentiality of transactions can be protected better.
- In competition situation it is often not possible to use other payment method as the buyer does not accept other financial conditions.

Disadvantage of an open account is **high risk for the seller** which is difficult to manage with protective conditions. Generally there are no coercive measures for the buyer in case he refuses to pay the bill or such measures tend to be time consuming and costly.

2.4.3.2. COD- Cash on Delivery

Cash on delivery is forwarder's or carrier's additional service for the seller (exporter) where they take responsibility to make sure that goods have been paid before transfer of goods.
Cash on delivery is a spot payment where seller's risk to get paid for the goods is taken to minimum since the forwarder or carrier takes an additional obligation to ensure it. The forwarder or carrier transfers goods to the buyer either for **cash or irrevocable bank transfer.** Cash can also be replaced by a cheque to reduce risks. See Figure 6.

If the claim for payment is made through the forwarder or carrier, the **exporter gives a written order or export forwarding order** with indicating **COD and final amount of invoice, e.g. EUR 8 435.** In that case the forwarder acts directly in cooperation with his representative, being responsible for performance of the task and asking also the representative to check the claim for payment or demand payment before transfer of goods to the payer or his representative in the country of destination. Cash on delivery for goods is totally related to goods transport chain and in that case the bank is used only for mediating the payments. The forwarder itself is responsible for the organisation and supervision of the claim.

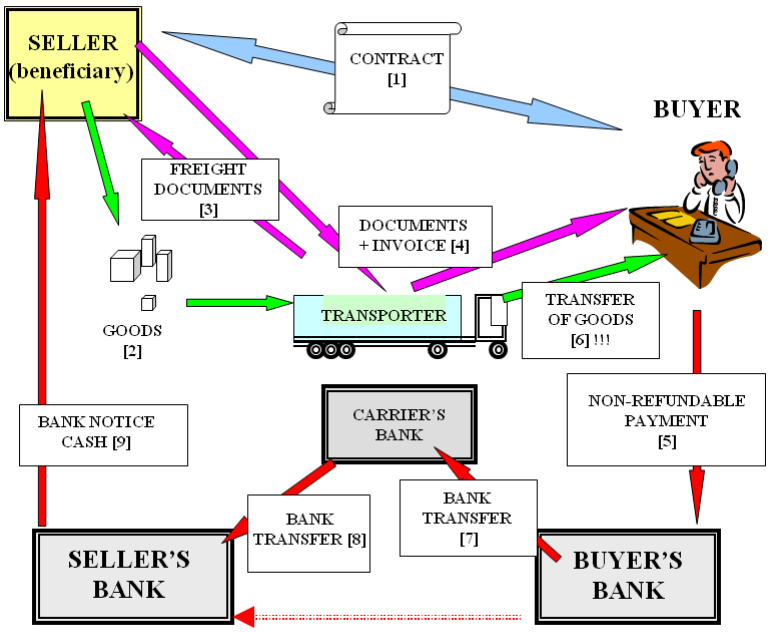


Figure 6 Using cash on delivery in international trade.

Forwarder's representative in the country of destination cannot allow the payer or his representative to check the delivery without the permission of the applicant (authoriser) before the agreed payment is made.

The task of the representative is to check in the country of destination that the **payer presents (**irrevocable) **payment order with bank's confirmation** with an indication to the invoiced amount or **pays the specified amount straight to the representative in the country of destination.** The representative sends the bank's payment order or the goods invoice to the forwarder of country of dispatch who advises it or records it to the authoriser's account.

Cash on delivery is an additional service and the ordering party pays the costs. The forwarder presents a forwarding invoice to the applicant, including the service fee for submission of follow-on claim of goods. The representative who is in the country of destination collects the costs related to payment with cash on delivery from the payer.

Cash on delivery is recommended in following cases:

- It is not possible to check the buyer's background and economic status
- Current experience with the buyer has not been positive regarding the payment discipline
- Batches are small with single rare deliveries, and checking the buyer's background may be too time consuming or costly
- In the countries where economic and political situation is not steady

The disadvantages of cash on delivery method:

- It is necessary to involve third parties to the process (forwarder or carrier and their local agent)
- Involves additional costs
- Background of forwarder (or carrier) and his agent must be checked
- Demands conclusion of an additional written contract

2.4.3.3. Payment by cheque

In foreign trade, payment by cheque is used more and more seldom and it is expedient to use it on cash on delivery conditions and in case of delivery of small batches, and for a single transaction in case of which the contract of sale is concluded in the form of offer-acceptance via e-mail, phone or fax, and it is not possible to check the background of the contract partner.

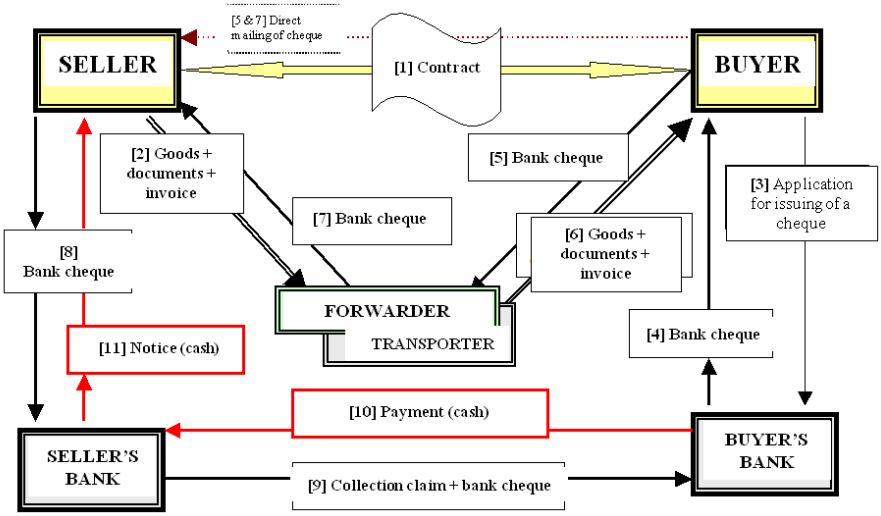


Figure 7 Payment by cheque in international trade

As a rule, bank cheques are used. Private cheques are usually not accepted as it is not possible to check their cover. In reception and delivery of cheques it is reasonable to use the services of the forwarder who receives also the bank cheque when transferring goods.

Disadvantages of payment with a cheque are as follows:

- Payment of cheque is time consuming since the banks handle it by collection and it may be done via several correspondent banks Payment may take 2-4 weeks
- Payment of cheque may be costly
- There may be mediators in case of a cheque (forwarder and his agents)
- In case of direct mailing of the cheque, the exporter does not have a guarantee about receiving the payment

2.4.3.4. Documentary collection

Documentary Collection - Cash Against Documents (CAD) **& Documents Against Acceptance (DAA)** are **documentary payments.**

Cash against documents is a payment method used in foreign trade if:

- Payment is made at buyer's place of location
- The seller is an initiator and gives the collection order
- The banks are not obliged to check the correctness of documents
- The seller must pay all costs in case not otherwise agreed in the contract

Claim for payment proceeding is based on Uniform Rules for Collections (URC) 1966 of the International Chamber of Commerce – reflected in publication 522 of the International Chamber of Commerce)[17] , entry into force on 1.11.1996. In international commerce CAD - cash against documents means claim for payment; also the terms clean or documentary collection (D/P) have been used. In Estonia, Division 5 of the Law of Obligations Act describes the collection transactions[18]. In export, the competition demands fast course of records management, especially when it comes to the promptness of payments which is characteristic in case of use of open account. On the other hand it is necessary to avoid the risks involved in the use of an open account. At the same time the documentary credit method is not often used. Although it is considerably more risk free, it is also more document and red tape intensive and hence time consuming and costly. In that case it is often better to use the documentary collection method which can be performed more easily than the documentary credit method and is also more risk free than use of an open account. If a company plans some transaction, it should also consider the payment conditions and method very precisely. Especially in case of new trade relations or when the competition situation demands it, the cash against document is selected as payment method. The seller has then the right of designation

[17] Please see the document at http://in.bsi.ir/PortalData/Subsystems/StaticContent/uploads/Image/saderat-en/5-2-5.pdf (29.01.2012)

[18] 40. Chapter 40 of Law of Obligations Act PAYMENT ORDER AND PAYMENT SERVICE [RT I 2010, 2, 3 – entry into force 22.01.2010] 5. Division 5 Settlement by collection §754 to 757

towards the goods as long as the buyer has performed conditions of transfer of documents giving the right of ownership of the goods.[19]

As a rule, following parties take part in international collection transactions:

- Exporter or seller
- The Drawer is a person who draws the bill of exchange [B/E] and is usually an exporter.
- Importer or buyer.
- The Drawee is a party to whom the bill of exchange [B/E] is drawn and is usually an importer.
- The Payee is the person to whom the amount indicated on the bill of exchange is paid. Usually the exporter, and often the drawer and the payee are the same person.
- Exporter's bank
- Importer's bank.
- Forwarder (or carrier), whose task is to perform the contract of sale upon transfer of goods.

Collection contract parties and stages of performance are reflected depending on the **payment methods** recorded in the contract in Figure 8 and 9. The sequence of stages is important (numbers **[1]** to **[10]** in the figure.)

Cash (payment) against documents payment method's payment conditions or clauses:

Clause D/P *(documents against payment)* assumes buyer-side payment of commercial invoice after the bank has notified about arrival of documents. In practice the payment is made after arrival of goods.

In case of documents against payment, the payment for goods takes place at the moment when the importer's bank delivers to the importer the documents accompanying the delivery. In case the importer does not pay, he cannot get the documents into his possession and so he cannot get the goods from the exporter. At the same time this does not limit the possibility of the importer to delay with the payment. The banks as well as other contracting parties do not have any coercive mechanisms to force the importer to perform the payment obligation. Based on that, the exporter is not able to apply sanction towards the importer. As a rule, such goods have already been delivered to the place of destination, the money is bound under the goods, and the storage fee and time require additional costs. Often the exporter does not have any other option but to transport the goods back at its own cost or search for an alternative buyer. In that case he might not receive equivalent price, especially when the goods are sold on auction. In that case the exporter is a losing party anyway.

[19] In addition it is recommended to examine the conditions provided by banks, e.g Documentary credits, collections and bank guarantees https://www.swedbank.ee/static/pdf/business/finance/trade/Hansa_A4_dokmaksed_eng_UUS.pdf (29.01.2012)

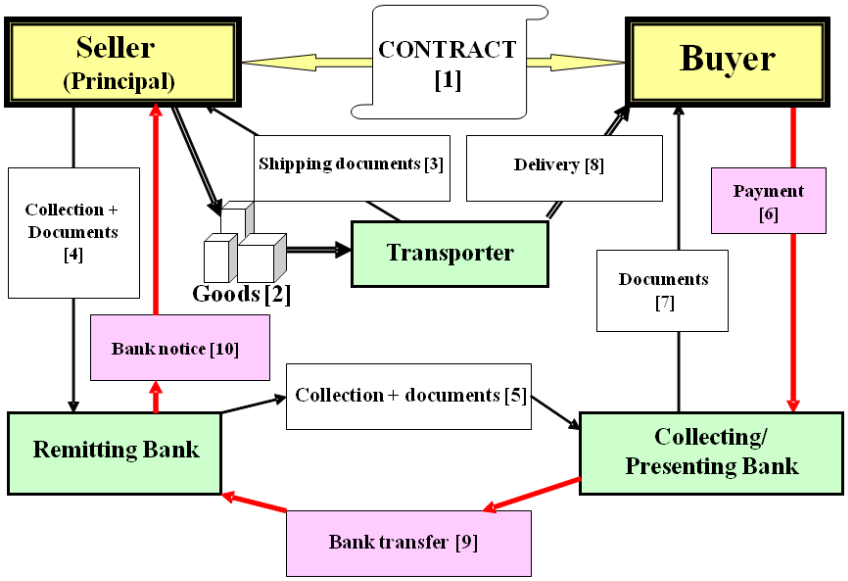


Figure 7 Documentary collections CAD D/P.

If the buyer does not have to pay for the goods immediately but only after acceptance of a **bill of exchange**, the **clause D/A (documents against acceptance)** is used.

In case of application of documentary collection clause D/A, bill of exchange has a central place. The bill of exchange is a written long-term obligation in a strictly determined form (see 2.4.2.3) which gives the owner of the bill of exchange the right to demand from the debtor the payment of foreseen amount of money after expiry of the due term.
The seller must mark down the due term for payment of the bill of exchange unambiguously and the bill of exchange payment term can be either:

- After expiry of the date of issue (e.g. 30 days date, 30 d/d)
- During the term after sight (e.g. 30 days after sight, 30 d/s)
- On a determined date.

Documentary collection is divided into two according to its nature:

- Clean collection means that the bill of exchange has not any supporting documents. It is used, if for some reason, the documents have been delivered to the buyer separately, or in case of export or import of services or immaterial products.
- Documentary collection. In that case the delivery-related documents are accompanying the bill of exchange. This version is mainly used in international trade of goods.

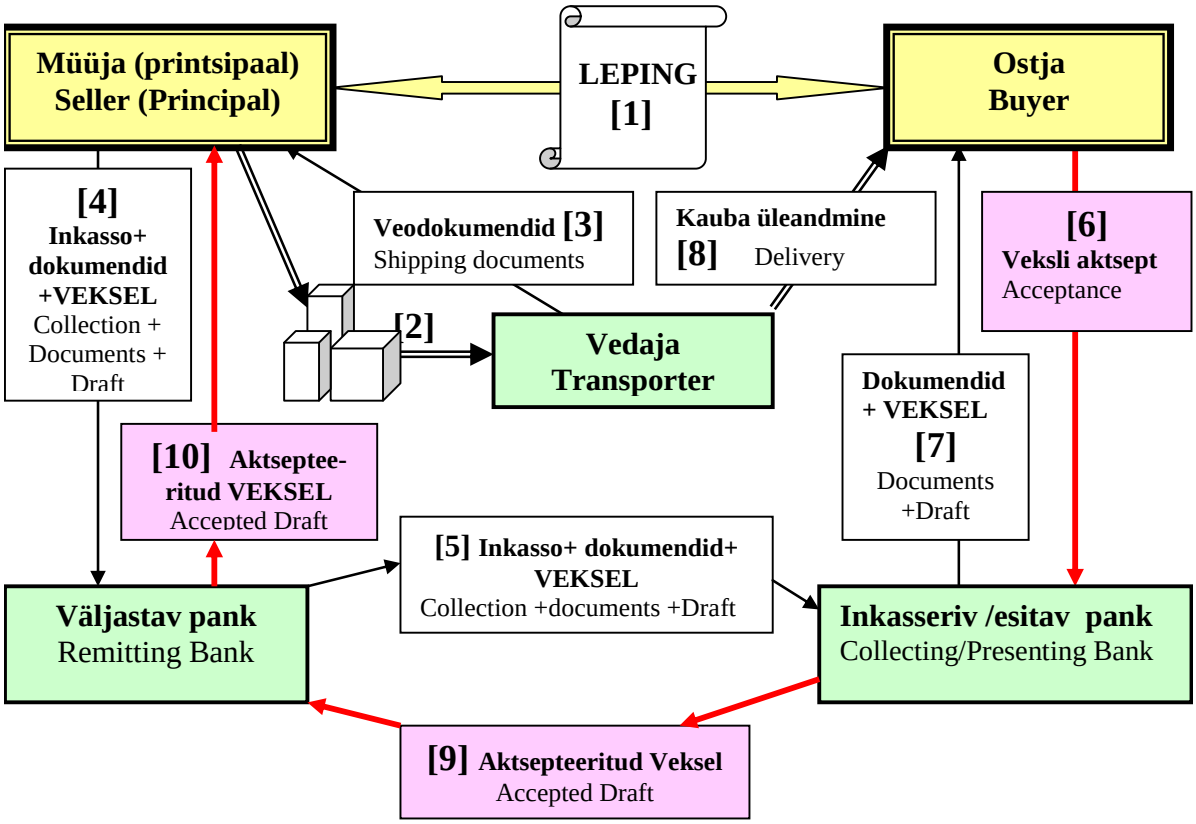


Figure 8 According to documentary collection clause CAA; D/A (with use of bill of exchange)

In case of D/A clause, the exporter acquires an accepted bill of exchange from the importer which the importer issues for redeeming the goods related document. Hence the importer's bank asks the importer for consent for payment. The importer makes the payment against the accepted bill of exchange on a due date indicated in the bill of exchange. This is also called a time draft method. If the importer does not pay the bill of exchange after the expiry of the due term, the owner of the bill of exchange (exporter) has the claim under law of bill of exchange but there is no possibility to take the collection documents or goods back. In case of this payment method, the exporter still has the risk that the importer refuses for drawing the accepted bill of exchange and taking out the documents for some reason.

In addition to acceptance of the bill of exchange the seller may demand securities of which the security of the bill of exchange is used most. The buyer's bank as giver of the security to the bill of exchange generally signs it and after that the documents confirming the right of ownership of goods can be delivered to the buyer. The bank security requires making of "confidence decision", an agreement must be reached regarding that. Private person may also give the security.

If the buyer's payment is delayed, the **transfer bill of exchange can be protested.** Clear guidelines must be given in the claim for payment order about the protest in case the payment or acceptance is not received. The costs and taxes for the protest and other legal proceedings made for the bank are incurred by the party from whom the claim for payment order was received.

The cash (payment) against documents, the authoriser – mainly the seller, sometimes also seller's representative or forwarder gives a task to his bank or sender's bank. The bank prepares its order

based on this and sends it to the bank in the buyer's country or to the bank collecting the money which presents the documents arrived with the order to the payer either directly or by mediation of another, presenting bank, and organises settlements with the sender's bank. There might not always be a sender's bank in CAD since the authoriser may send that order directly to the bank being responsible for the claim.

Risks of collection transactions.

In case of collection transaction, the exporter has all risk involved in foreign trade. Risks directly following the collection transactions are:

1. Exporter's risks:
- An importer does not redeem goods or documents or refuses to pay in case of CAD L/P payment conditions.
- An importer does not draw an accepted bill of exchange and does not take out the documents in case of CAA D/A payment conditions.
- Documents arrive later than the goods (especially in case of using small transport volumes and air transport.) In that case there will be additional costs at storing and preservation of goods.
- Original bill of lading may occur directly at importer in some ways (e.g. due to the mistake of a forwarder or carrier) and the importer receives goods without performing of collection claim.

2. Importer's risks:
- An importer must accept the document or pay before he physically sees the goods and make sure their conformance to the contract of sale concluded with the exporter. The transaction where the buyer has the possibility to take samples of goods can be made on consent of the seller.

Costs of claim for payment

Conclusion of a transaction should include an agreement about which party will pay the costs caused by CAD. According to harmonised rules, the authoriser is responsible for such costs if he has not ordered to collect it from the buyer or when the payer despite of his promise refuses to pay it. It is considered applicable that both parties pay their own bank costs. In case the authoriser allows division of the lot of goods or payment by instalments, the payer should agree to pay the relevant costs.

Special attention should be paid for the instructions about claiming of interests. In case the interests are to be claimed, this must be fixed in the order as an integral percentage indicating the interest determination period and calculation basis. If the order determines that interests must not be forgotten, that it is not possible to withdraw from interests and the payer refuses to pay the interests, the presenting bank shall not give out the documents and shall not to be blamed for the consequences following the delay in delivery of documents. A state fee must be paid for the bills of exchange to be paid and so the seller often draws the bill of exchange for payment abroad.

Claim for payment of export

To perform the order appropriately, the bank needs precise and proper instructions:

- Authoriser's data
- Payer's data
- Amount of claim for payment and payment date
- Cash against documents - instructions
- Instructions for settlements
- Data for identifying goods, transport route, and means of transport
- List of documents

The authoriser must find out necessary documents before giving CAD task as the requirements are different in different countries. The bank is not obliged to check whether the delivered documents conform to the requirements established in different countries. Most ordinary CAD documents are invoices, bill of lading, delivery document, insurance, and draft.

The bank performs protection of authoriser's interests. The banks reserve themselves the right to demand advance payment for their costs from the party from whom they received the specified order, in order to cover the costs the instructions related to performance of CAD may cause. The banks reserve themselves the right not to follow such orders before the payment corresponding to the costs is paid. Collecting bank is obliged to send immediately a payment notice to the bank having sent the CAD order, where the amount of claimed sum of money is separately brought out, its possible deductions and taxes or fees have marked, alongside the method by which the money is recorded to the account.

The presenting bank is obliged to inform immediately the bank from whom it received the CAD order if they have not received the payment or payment acceptance. After receiving such notice, the sending bank must give detailed orders for further handling of documents. If the presenting bank does not get relevant orders within 60 (sixty) days from the day when they informed about the unpaid invoice or unacceptance of the payment, it may return the documents to the bank from where the CAD order was received and henceforth, the presenting bank does not have any obligations towards this claim for payment.

Claim for payment of import

Cash against documents - documents are sent to the collecting bank according to the order. After arrival of documents to the bank, the bank informs the payer about the arrived order. The payer redeems the documents from the presenting bank immediately after first sight either with payment or acceptance of the bill of exchange. In case the permission proceeding is applied to the goods of relevant import, the import permission must cover the goods and its validity period must extend to the day of filing of a possible protest.

If the payer wishes to change CAD, the submitting bank must be informed about it as soon as possible since the authoriser's approval is needed for entering changes. The payer can check the

documents in the bank. When the documents are delivered to the payer there is no right to return them to the authoriser or cancel the payment any more.

The payer cannot examine the arrived lot of goods in the forwarders warehouse before submitting to the forwarder the documents confirming the right of ownership.

Measures related to the goods

One lot of goods loaded with one bill of lading can be on the permission of authoriser divided and transferred to the payer after payment of the instalments with respective amount. The bill of lading and proportional redeem orders corresponding to division are delivered to the forwarder.

CAD often involves an order to deliver goods to the open customs warehouse when the payer does not redeem the documents during a determined date after the arrival of the goods. The collecting bank sends documents to the forwarder who transfers goods to the payer, based on a dispatch order issued by the bank. Transfer to the customs warehouse avoids erroneous customs duties; payments for clearance for one part of the lot of goods are made only for the part of the goods to be dispatched.

2.4.3.5. L/C – Letter of Credit; D/C – Documentary Credit

Documentary credit is an obligation of buyer's bank to pay to the seller for the delivered goods or service on the date determined in the documentary credit, provided that all conditions of the documentary credit are performed and all requested documents are presented.

When **documentary credit** is used, the payment is made when the conditions determined by the parties of the transaction are performed. This is the only payment method where the buyer's bank is obliged to make the payment. The obligation of an applicant or the buyer is valid when the bank can confirm based on the export documents submitted by the seller that the conditions of documentary credit are performed. In case of documentary credits, the banks handle only the documents and handling is based on **Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce. Version UCP 600** ***(****The* ***Uniform Customs and Practice for Documentary Credits)***[20] is valid from 01 July 2007. Before that date the conditions UCP 500 were valid. Documentary credit is the most reliable payment method in foreign trade. In Estonian legislation the Division 4 or Chapter 40 of the Law of Obligations Act [21] describes documentary

[20] The whole text can be downloaded as freeware from, e.g. http://www.mediafire.com/?nyjobkbl60u18ti or http://www.google.ee/search?q=UCP+600&hl=et&prmd=ivnsb&ei=cFIlT7-zF43Z8QP8v42_Bw&start=0&sa=N

[21] 40. Chapter 40 of Law of Obligations Act PAYMENT ORDER AND PAYMENT SERVICE [RT I 2010, 2, 3 – entry into force 22.01.2010] 4. Division 4 Settlement by letter of credit §747 to 753

credit transactions. In addition all banks operating in Estonia describe the options and conditions of documentary credit contract. Some references: (Swedbank)[22], (SEB)[23], Nordea Bank[24] etc.

Documentary credit is used when the seller and the buyer do not know each other or when the geographical distances are too long. Documentary credit excludes the insecurity caused by the economic political status of the transaction parties. Selection of payment method can also be influenced by currency policies established in a certain country. **The buyer** wishes to **be sure about the quality of goods** and the delivery time and do it on conditions determined by him. In the interest of the seller, the documentary credit should be used when the price of the goods or services is high or when the product is custom made.

Advantages of the documentary credit compared to other payment methods are briefly as follows:

1. **From seller's standpoint:**
   - Certainty regarding receiving of payment when the seller performs all conditions of the documentary credit since the issuing bank has taken responsibility to pay for the delivered goods on the payment date despite of the solvency, wish, or discretion of the buyer. The seller may (in case of any doubts about buyer's bank) demand confirmation of the documentary credit by the bank he trusts.
   - Enables the seller to give the buyer a deferred payment, receiving immediately money from his own bank after submission of proper documents and applying for discount of the receivable money by the bank. This gives a competitive edge (it is possible to find more buyers by providing the option to pay by instalments) without worsening the liquidity in the company.
2. **From buyer's standpoint:**
   - Option to avoid prepayment (advance payment, downpayment). Bank makes the payment to the seller only after the seller has performed the conditions of documentary credit, i.e. after dispatching goods on the dates and conditions indicated in the documentary credit.
   - Option to apply for a longer payment date since the seller can be sure about receiving the payment.
   - Option to prove the reliability since opening of a documentary credit by the bank is already a confirmation for the seller about the solvency of the buyer. Opening of a documentary credit shows buyer's solid intent for performance of contractual obligations.

The buyer and the seller jointly determine the form of opened documentary credit upon conclusion of a contract. In that case the seller has no need to ask for entering changes on order of the buyer to the already opened documentary credit and so the time and the costs are saved. Prior agreement should be reached in respect of payment of documentary credit related costs.

[22] Documentary credits, collections and bank guarantees https://www.swedbank.ee/static/pdf/business/finance/trade/Hansa_A4_dokmaksed_eng_UUS.pdf (29.01.2012)
[23] http://www.seb.ee/eng/business/financing/trade-and-supply-chain-finance/letter-credit
[24]+http://www.nordea.ee/Nordea+Pangast/Uudised/Uudised+2011/Garantii+taotlused+ja+akreditiivi+blanketid+n%c3%bc%c3%bcdsest+ka+elektroonselt+t%c3%a4idetavad/1492962.html (in Estonian)

The seller should demand opening of irrevocable documentary credit. In case the seller has doubts about the solvency of the bank or its wish to pay, the seller should demand the **confirmed documentary credit.** In that case the issuing bank submits seller's bank a **request to confirm the documentary credit**. **Confirmation of documentary credit** means that the seller's bank takes responsibility for payment obligation like the issuing bank. The seller may ask his bank to make a preliminary decision about confirming the documentary credit and its costs.

For the seller, the documentary credit is a fast way to receive the payment. **This is the only payment method which enables receiving the payment right after the delivery.** This can be effectively used for financial planning.

Parties of documentary credit

There are usually four parties in documentary credit: **the seller, buyer and banks of both.** The participation of seller's bank is not obligatory and on the other hand also other banks can take part in documentary credit.

Buyer *(applicant* = person giving the order e.g. authoriser)
Buyer's order to his bank takes place based on **written explicit documentary credit obligation. The obligation brings out the conditions and place of documentary credit.**

Seller (beneficiary = person receiving documentary credit, beneficiary)
When the seller has delivered goods to the transportation operator, he submits documents to the mediating banks or other bank from where he has received documentary credit. If the bank is sure that the documents correspond to the conditions of the documentary credit and that the documents are submitted before the expiry date of the documentary credit, the seller receives the payment according to the order of the issuing bank. After that the intermediary bank sends the documents to the issuing bank of the documentary credit which delivers them to the buyer.

Buyer's bank (issuing bank)
Issuing bank opens the documentary credit according to the received order and informs the seller about issuing either directly or through the advising/confirming bank.

Seller's bank e.g. advising bank (advising bank/confirming bank = intermediary bank)
Intermediary bank informs the recipient of documentary credit about the conditions of the documentary credit and applied responsibilities if he has been asked to confirm the documentary credit. Depending of the type of documentary credit, the intermediary bank is the paying, payment intermediating, or accepting (confirming) bank.

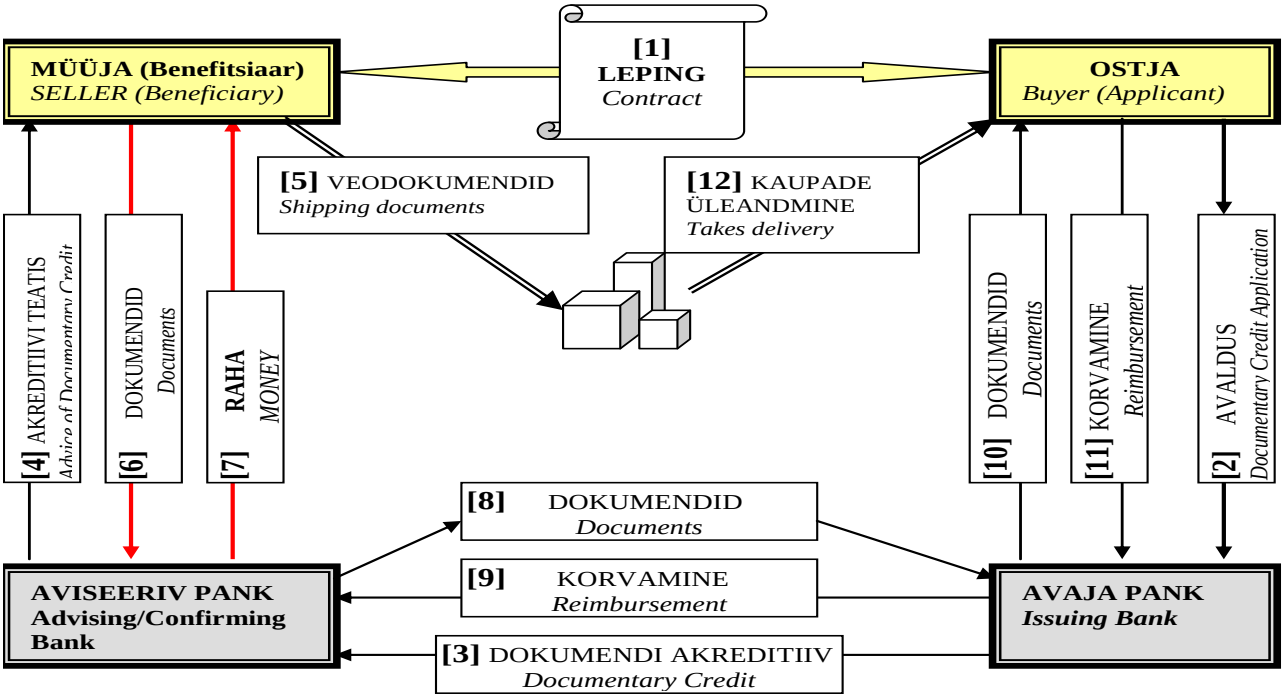


Figure 9 Course of realisation of a contract according to the documentary credit.

After conclusion of a contract with a seller [1] which assumes use of a documentary credit, the buyer asks his bank to issue a documentary credit [2]. At the same time he pays the bank costs and makes an agreement about payment of cover of the documentary credit. Buyer's bank issues the documentary credit through its correspondent bank [3]. At the same time the issuing bank informs how the intermediary bank gets the cover for performed payment or its intermediation. The intermediary bank informs the seller about issuing the documentary credit [4] and the seller can then deliver the agreed goods [5]. The seller submits required documents to the intermediary bank [6] and receives the payment indicated in the documentary credit [7] in case the conditions of the documentary credit are performed. The intermediary bank sends the documents to the issuing bank [8] where based on the documents it will be decided whether the payment of the intermediary bank can be accepted and if so, the payment is reimbursed to the intermediary bank [9] and the issuing bank assigns the documents to the buyer [10] against the reimbursement payment [11]. The buyer gets the goods from the carrier against the redeemed documents [12] and this finalises the transaction. In documentary credit confirmed by intermediary bank itself, it is obliged to decide whether the submitted documents can be accepted but the issuing bank still reserves the final right of decision.

2.4.3.6. Types of documentary credits

Form the standpoint of the recipient of the documentary credit (seller) it is essential to find out:

- Whether the documentary credit is irrevocable or it can be revoked.
- Whether the intermediary bank has confirmed the documentary credit or not.

- Whether the documentary credit has a fixed term or a documentary credit to be paid on submission of documents.
- The time he receives the final payment.

1. Irrevocable documentary credit

The irrevocable documentary credit is issuing bank's unconditional obligation towards the recipient of the documentary credit and based on it the seller can be sure that when he performs the conditions and rules of the documentary credit appropriately he will certainly receive its payment. Irrevocable documentary credit cannot be modified or cancelled during its validity period without the consent of all parties. In international trade mostly the irrevocable documentary credit is used.

According to the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce (ICC) the documentary credit must clearly indicate whether it is irrevocable or revocable. If there is no such mark, the documentary credit is handled as irrevocable documentary credit.

Intermediary bank issues the irrevocable credit as non-committal or confirms it. The documentary credit issued as non-committal (unconfirmed) does not oblige the intermediary bank.

2. Revocable credit

The documentary credit can be revoked or modified without the consent of a recipient of documentary credit (seller) provided that the intermediary bank has not made the payment before it gets a notice for revocation or modification. Revocable credit does not give a security for the seller about the payment but indicates on what conditions and from where it can receive the payment.

3. Unconfirmed credit

The intermediary bank is not obliged to pay the documentary credit. Issuing bank has generally authorised the intermediary bank to pay to the seller upon transfer of payment's documentary credit documents.

4. Confirmed (irrevocable) documentary credit

The seller often wishes that the intermediary bank takes the responsibility for payment of final amount based on documentary credit. In that case the bank asks the buyer to get to the documentary credit the confirmation from the intermediary bank. The confirmed documentary credit means that the **intermediary bank gives the seller the same guarantee about making the payment as the issuing bank.** Payment without booking is hence final. If the seller wishes to have intermediary bank's confirmation on the documentary credit, it must agree this beforehand with the buyer and this condition must also be entered into the contract in written.

In respect of the form and time of the performance of the payment the documentary credits are divided as follows:

5. Payment at sight (also sight credit)

This is a documentary credit paid when submitting documents (see Figure 9 above) where the payment is made to the seller after submission of documents required in the contract to the payer's

bank. In practice, checking of documents in the bank takes some time and hence the payment is made in some days.

6. Local documentary credit

From the standpoint of the seller, it is important on which point exactly he will receive the payment against the documentary credit and the finality of that payment, which again depends on the nature of the documentary credit. In case the issuing bank has not given the intermediary bank the right to perform transactions with documents, this is a **local documentary credit.** With local documentary credit, the issuing bank is obliged to make payment only after it has received the due documents. The most important difference between the local documentary credit and the ones which themselves can be objects of a transaction is that reception of documents based on local documentary credit does not establish contractual relationship between the banks.

7. Deferred payment (also time credit)

In case of that type of documentary credit, the documents are submitted to the bank during the validity period of the documentary credit, but payment is made after certain time either from the date of the transport document or date of submission of documents. Such documentary credit form is one possible version when selling by instalments. Such documentary credit can be discounted.

Instead of cash, the bank generally accepts the bill of exchange issued by the seller. In that case it is:

8. Acceptance

In case of such type of documentary credit, the recipient of the documentary credit must issue a bill of exchange to the bank indicated in the documentary credit which must be paid during the due term established by the seller. The bank accepts the bill of exchange when the documents conforming to the documentary credit are submitted. The bank having accepted the bill of exchange pays the bill of exchange during the payment period. As a rule, such documentary credit is used in case of deferred payment periods. Bill of exchange accepted by the bank can be discounted.

Although it is in the interest of the seller to receive payable documentary credit when submitting the documents, it is possible to issue a time credit for its benefit so that the seller obligates the intermediary bank to pay the bill of exchange (draft) accepted during the payment period which it has accepted on submission of documents and discounts the bill of exchange, demanding the discounting costs and interests from the buyer.

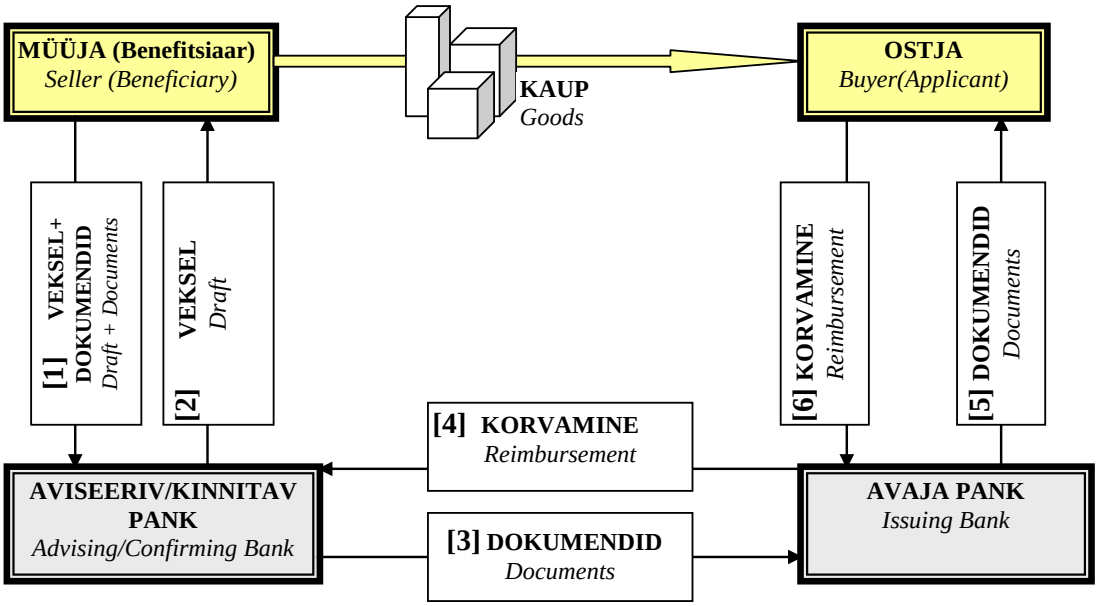


Figure 10 Performance of the contract, based on settlement by acceptance

9. Negotiation credit

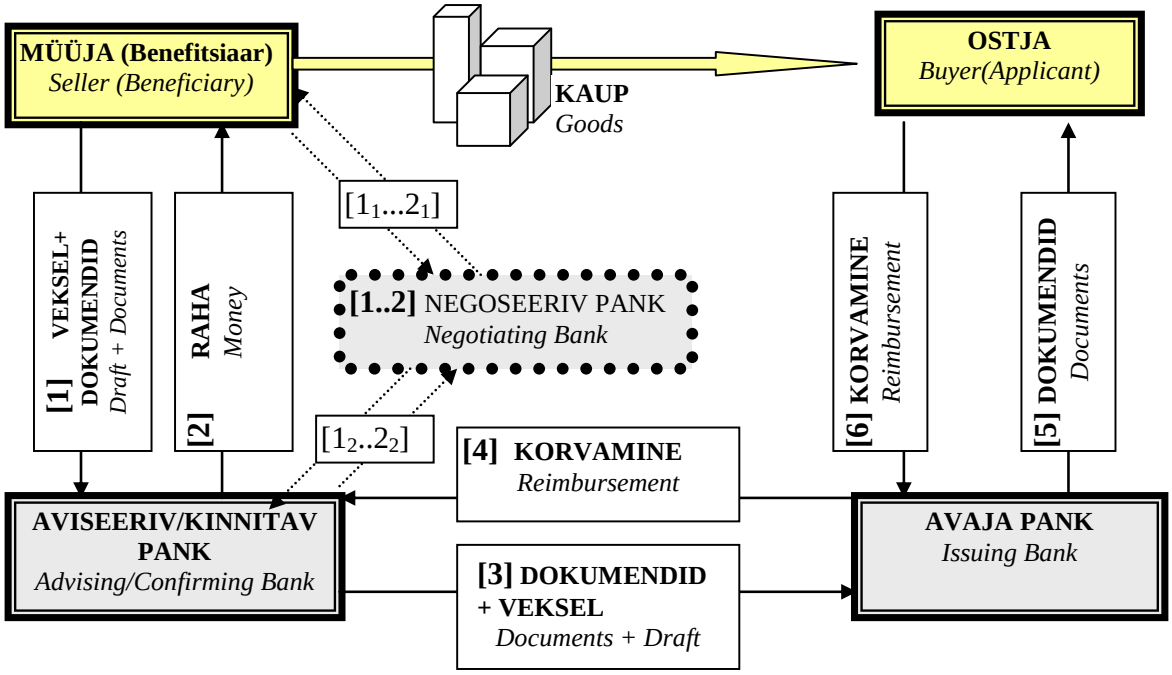


Figure 11 Settlement by negotiation

In case of this kind documentary credit, the negotiating bank **may buy (negotiate) the documents submitted by the seller**, however it is not obliged to do so. At the same time, the issuer of documentary credit or the conforming bank must pay for the documents. Negotiable credit is often used when the issuer of the documentary credit (or as a rule, the buyer) does not know in which

bank the seller wishes to pay the documentary credit. **In case of freely negotiable credit, the seller can take its documents and documentary credit to any bank** and when reaching an agreement, sell the documents to that bank. The bill of exchange is also often enclosed to the required documents. In case of negotiable credit confirmed by the bank the payment towards the seller is always final when the performed checks show that the submitted documents conform to the conditions of the documentary credit.

Based on the aims of using the documentary credit, they can in turn be divided as follows:

10. Revolving credit

The buyer gives a certain agreed amount to the disposal of the seller during an agreed time, e.g. monthly, quarterly. This method can also be used in case of regular and fixed time deliveries during quite a long period. The revolving credit can also be issued for a certain period so that after use it automatically takes back its original rate. The issuing bank must then determine its responsibility towards the amount of the documentary credit.

11. Red or green clause documentary credit

Red or green clause documentary credit contains a clause in its text which allows making a partial advance payment to the receiver of the documentary credit on account and at risk of the issuing bank. For advance payment also the documents which prove that the goods have been supplied to a certain place and ready for delivery are requested (so-called Green Credit), e.g. certificate by the warehouse worker or forwarder's documents Forwarder's Certificate of Receipt *(***FCR**) and Forwarder's Warehouse Receipt (**FWR)**. If the goods are not stored, the written confirmation can be demanded from the seller, confirming that the advance payment is used for the goods to be received. Documents prescribed in the documentary credit are submitted on due terms prescribed in the documentary credit (so-called Red Clause Credit). Green or red clause credit is used relatively seldom since the buyer's and issuing bank's risks are not managed regarding the advance payment.

12. Transferable Documentary Credit

Documentary credit can be transferred if the recipient of the documentary credit is not an assignee but intermediates the transaction and does not want to use its funds for it. The documentary credit is often transferred to the benefit of the subcontractor. **Documentary credit can be transferred only when it is allowed in the original documentary credit.** Transferable documentary credit is transferred under conditions of original documentary credit; only the following can be modified:

- Reduction of amount of documentary credit and unit price of the goods.
- Reduction of validity period of a documentary credit and last due date of goods dispatch.
- Increasing of insurance rate of goods (%) so that it conforms to the requirements of the original documentary credit.

First recipient of documentary credit transfers the transferable documentary credit on his name and a new recipient is the assignee. The buyer then does not know the actual seller and the intermediary will receive as a fee the amount of interest between the amounts of two documentary credits.

.

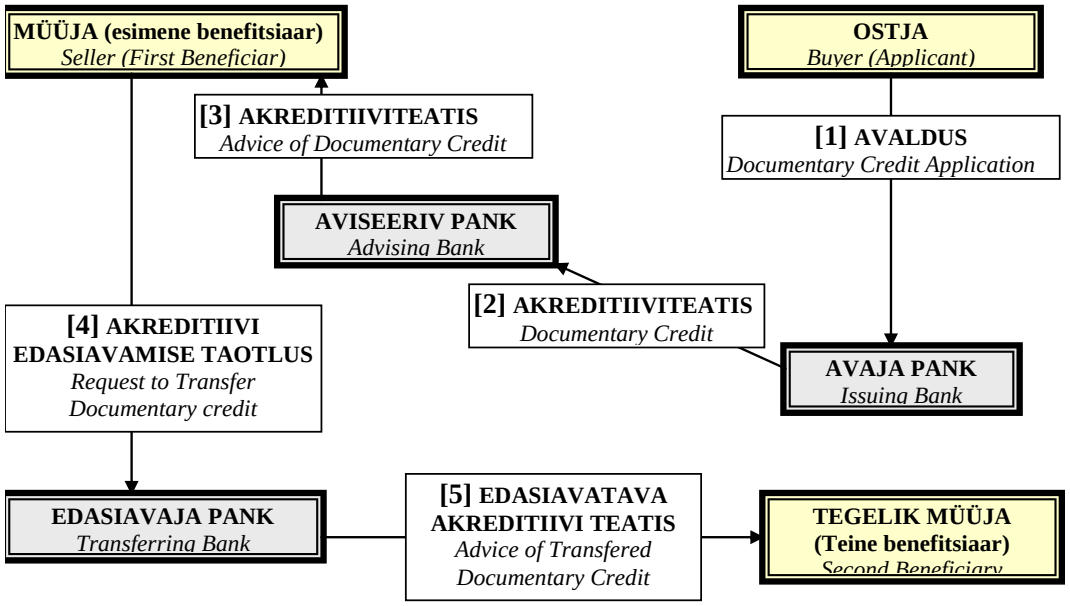


Figure 12 Course of transferable documentary credit

13. Back-to-back documentary credit (also reimbursement credit)

In some case the **seller may use issued original documentary credit as a security and ask the bank to issue the documentary credit for example for the benefit of the subcontractor.** This is the way of the seller who wants to hide the final buyer or conceal from the buyer that he procured the goods from somewhere else. The principle for using such type of documentary credit is the same as in case of transferable documentary credit. Similar to transferable documentary credit, majority of the conditions are required documents are the same as in the first documentary credit. The difference is that both transactions are observed as different transaction and the first documentary credit is only the security for the second documentary credit hence the refusal of the issuing bank of the first documentary credit does not exempt the issuing bank of the second documentary credit from payment obligation. **Documentary credits are interrelated only for the intermediary and its bank** (see Figure 13). Issuing of *back to back credit* is transaction with higher risk for the intermediary bank and hence additional securities are required.

This type of documentary credit is used if it is not possible to issue transferable documentary credit due to either documentation necessary for the buyer or difference of delivery terms.

14. Assignment of Proceeds

The intermediary can **use assignment of proceeds** instead of transfer of documentary credit or back to back credit. In that case the bank issues a written confirmation on application of the recipient of the documentary credit that part of the sum arrived based on documentary credit is transferred in a prescribed amount to the recipient of transferred receipt (see Figure 14). Such transfer of money takes place only when the payment arrives for the benefit of the person receiving it based on documentary credit (as a rule, intermediary). The assignee should accept the transfer of receipt from the intermediary only when he knows the intermediary enough and is sure that the latter wishes and can perform the conditions of the documentary credit.

This is an incomplete solution for the assignee which does not give sufficient guarantees for receiving of payment and, if possible, it is recommended to use more secure forms of documentary credit.

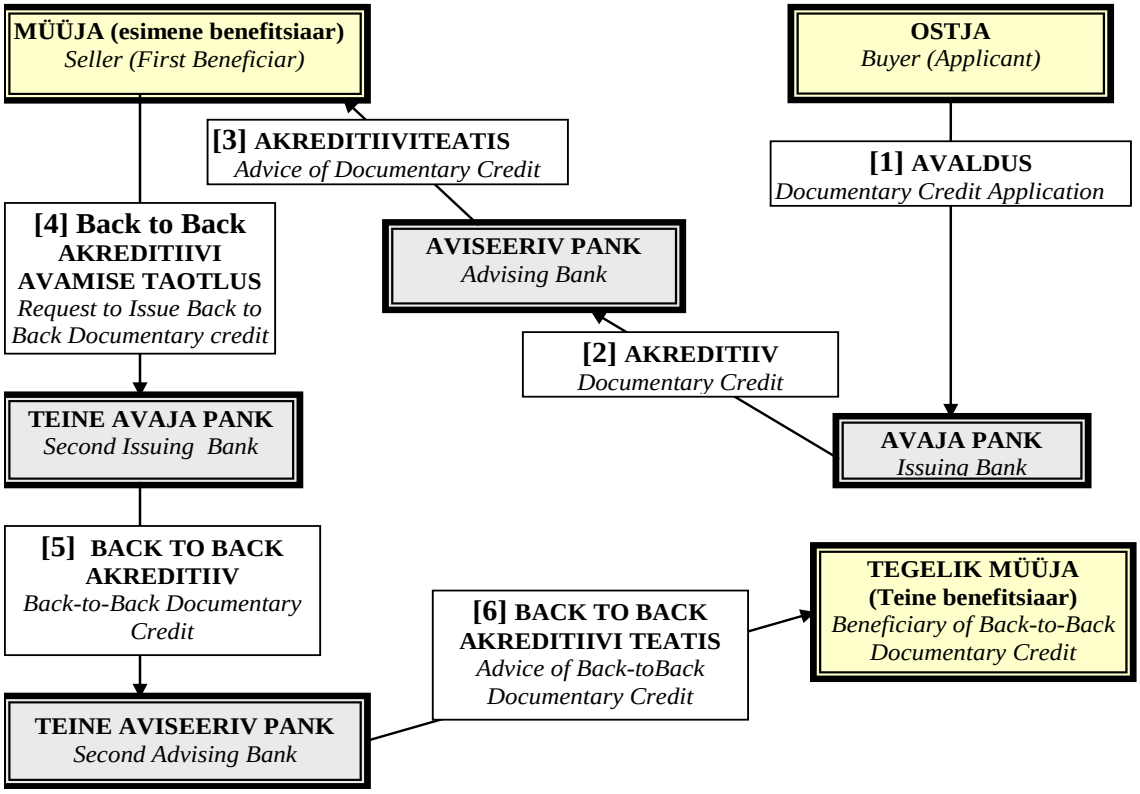


Figure 13 Example of use of back –to Back Documentary Credit

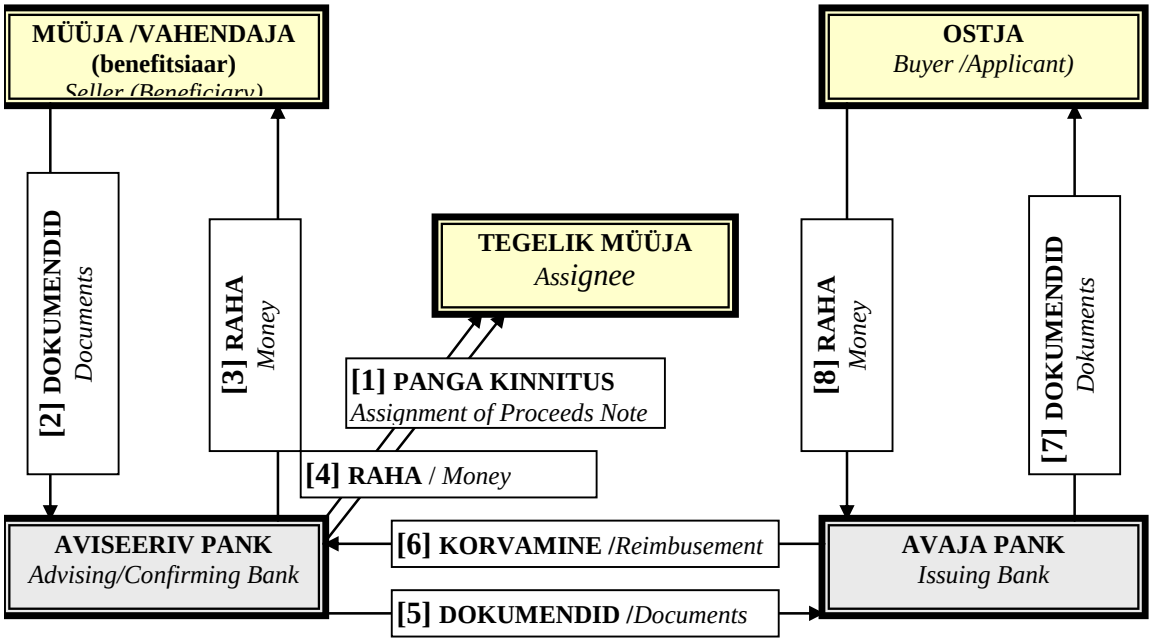


Figure 14 Assignments of Proceeds

15. Standby Documentary Credit

Standby documentary credit is similar to bank guarantee and it ensures the documentary credit of the payment to the recipient in case the buyer does not perform its obligations. Issuing bank guarantees that the seller will receive his money on some determined date in case the seller has not received the sum of the transaction before that date. Standby documentary credit differs from general documentary credit because the payment to the seller is made based on the documentary credit after submission of relevant documents to the bank; in case of standby documentary credit, the payment to the seller for delivery takes generally place outside the documentary credit, and the **documentary credit is used only when the buyer does not perform its contractual obligations.** The form of the standby documentary credit differs from the bank's guarantee letter, i.e. security is issued in the form of a documentary credit and international rules established for documentary credit are extended to it. Banks in the USA very often use such documentary credit.

2.4.3.7. Setting and realisation of documentary credit conditions

1. Import documentary credit in brief

Documentary credit is the obligation of the bank of the buyer to pay to the seller when it conforms to the requirements of the documentary credit. Based on that, issuing of a documentary credit in a bank always requires separate handling of credit giving. When the buyer pays for the documentary credit already during its issue, it is the **documentary credit with cover** paid on submission of documents.

In case the bank gives credit to the buyer for issuing documentary credit, it is the **documentary credit without a cover or unsecured documentary credit** upon submission of **documents.** Documentary credit without cover may contain also the credit limit given to the buyer. If the seller enables the buyer some time for payment, it is a **fixed term documentary credit** issuing of which always insists the bank’s decision on giving credit.

Documentary credit is bank's payment obligation hence its expenses are higher than of other payment methods. In case the conditions of the documentary credit do not indicate who incurs the costs, the buyer pays all bank expenses. It is recommended to divide the costs so that either party is responsible for costs incurred in their country.

The buyer should prepare and fill out the application of documentary credit very carefully since the changes always involve additional costs and delay performance of the transaction. The conditions of the irrevocable documentary credit cannot be changed without the consent of the seller. Application of documentary credit must conform to the terms and conditions of the contract.

2. Transfer of documentary credit and claim for payment from the buyer

Buyer’s bank checks the documentary credit documents sent by the seller's bank. In case the documents conform to the conditions set in the documentary credit, they are delivered to the buyer. If the documents do not conform to requirements, the bank contacts the buyer. According to the

documentary credit rules, the buyer may refuse from acceptance of documents only due to errors in documents or their submission. Deficiencies of goods cannot be taken into account in case the documents conform to the conditions prescribed in the documentary credit.

The buyer has already paid for the documentary credit documents with cover at the moment of issuing. The documentary credit without cover is paid when documents which conform to the conditions of the documentary credit and have been submitted by the seller have arrived to buyer's bank or when the information about their submission to foreign bank has been received. Time credit is claimed for payment on a date foreseen for payment.

3. Export documentary credit and notifying about issuing of documentary credit

After the document for issuing a documentary credit has been received from the buyer´s bank and its authenticity has been ascertained, the seller's bank forwards to the seller the copy of the documentary credit and data about the time of payment and its possible confirmations.

In case the issuing bank has not asked the confirmation of documentary credit from the intermediary bank, the intermediary bank may, on request of the seller, guarantee the payment of documentary credit according to its independent power of decision. The granted so-called silent confirmation gives the seller a guarantee which is similar to the confirmation made on request of the seller. The only difference is that the bank having issued the documentary credit is not informed about such security (guarantee) but this remains as an agreement between the seller and the intermediary bank.

The exporter can gain the issuing of documentary credit also directly from the issuing bank. The exporter should contact its bank to be sure about the authenticity of the documentary credit.

After the seller has received the documentary credit directly from the issuing bank, the seller checks whether the conditions of the documentary credit conform to the conditions of the contract and whether they can be implemented. If needed, the buyer must be contacted to change the conditions of the documentary credit. Payment of documentary credit takes place only when the documents have been submitted. The bigger is the seller' grounded wish to demand use of documentary credit, the more essential it is that the conditions set in the documentary credit can be performed.

4. Submission of documents and payment to the seller

After the seller has submitted the documents to the bank, their conformance to requirements of the documentary credit is checked. Invoices, freight documents, and insurance policies must conform to the quite detailed conditions of the documentary credit in case it is not determined otherwise. There are no form-related requirements prescribed for certificates of origin, quality, weight, dimension, and other certificates. The banks accept the certificates provided that they are issued by the institution indicated in the conditions of documentary credit and that they do not contradict other documents.

Payment obligation of the issuing bank or confirming bank will arise when the bank has fixed that the documents conform to the conditions of the documentary credit.

Some differences in documents which have been named in the conditions of the documentary credit can be corrected, e.g.

- Missing documents can be obtained.
- Missing information can be supplemented with documents.
- Minor differences of interpretation can be allowed.

The following cannot be changed after submission to the bank: validity period, loading date, limits valid for size and completeness of the delivery and transhipment.

There might be cases where the documents do not correspond to the conditions prescribed in the documentary credit even after the corrections have been made. In case the bank regards the differences as insignificant or only form-related, the bank may make the payment with certain reservations. In that case the bank may demand reimbursement of transferred money from the seller if the issuing bank of the documentary credit does not accept the submitted documents. If, according to the bank the differences are not insignificant, the bank shall ask the issuing bank for the permission for acceptance or sends the documents to the issuing bank for approval.

It is essential to follow the conditions of documentary credit since even a form-related error may cause exposure of such risks, for avoiding of which the seller has demanded opening of a documentary credit.

A documentary credit can be advised for payment upon submission of documents when the seller receives the payment within a few days after checking the documents. The payment can be demanded to be paid on submission of documents after the financial cover of the goods has arrived from the issuing bank.

The issuing bank pays the confirmed time credit on the payment day; in case of unconfirmed time credit, it shall be paid after money is received from the buyer. The bank does not have the guarantor right towards the exporter for payment of confirmed documentary credit.

The exporter may change the time credit confirmed by the intermediary bank into spot payment by selling (discounting) the bill of exchange. Discounting decision can be made without the decision to give credit.

5. Checking of documents

In completing the documents it must be taken into account that the banks, when they issue the documentary credit, try to do it as simply as possible and without irrelevant details. This sets the task for the seller to ask from the buyer, forwarder, or local chamber of commerce about possible specifications in trade practices and requirements presented for documents and the form of documents in the importer’s (buyer’s) country of location. These requirements should not bring the documents into conflict with requirements in the documentary credit.

Among the documentary credit documents, the bank checks the following:

- All documents presented in documentary credit must be submitted.

- Documents are submitted during the validity period of the documentary credit or latest within 21 days from dating the delivery note (accompanying document) if not otherwise stated in the conditions of documentary credit.

- Please find the list of most commonly used documents for certifying the performance of conditions of documentary credit:
- Draft
- Commercial invoice
- Insurance policy
- Freight documents. Bill of lading (marine transport) and consignment notes (road and air transport)
- Certificate of origin
- Other documents like certificate of check before loading, weight certificate, packaging sheets, etc.

Requirements for documents are handled in Chapter 2.5.

2.4.4. Protective conditions against failure to pay

It is reasonable to apply protective conditions in international trade contracts in case we do not have other possibilities for managing financial risks. Especially if it is impossible use documentary payments. Protective conditions usually mean the following opportunities reflected in the contracts, including interest on account of late payment, guarantees, and pledges**.**

2.4.4.1. Interests on account of late payment

Interest on account of late payment is a right based on legislation to demand compensation of costs caused by late payment. In Estonian laws this is reflected in the general part of the Law of Obligations Act. Amount of interests on account of late payment is agreed at conclusion of the contract between the contract parties and is, as a rule, larger than the interests of bank loans; this must stimulate the due performance of contractual obligations.

2.4.4.2. Guarantees

Guarantors are private persons or companies who guarantee the performance of terms and conditions of the contract. The most common guarantees are bank guarantees.
Bank guarantee is a bank´s obligation to pay certain compensation to the beneficiary of guarantee in case of failure to perform obligations by the applicant of the guarantee.

Use of guarantee in the transaction

- Applicant of guarantee submits to its bank an application to guarantee the performance of contractual obligation (e.g. pay for the goods, provide service, etc). Since the bank is obliged to pay financial compensation to the beneficiary of the guarantee, the bank should make a credit decision about the applicant of the guarantee before issuing a guarantee.

- If the beneficiary of the guarantee thinks that the contract partner has failed to perform its obligation, the beneficiary of the guarantee demands compensation from the bank. The bank pays the claimed amount to the beneficiary of the guarantee based on a written application and demands this amount from the applicant of the guarantee. If there are no obstacles in transaction, the guarantee not used shall expire.

Most common types of bank guarantee are:

- **Bid Bond -** ensures the beneficiary of the guarantee, who organizes the bid, an agreed compensation in case the participant of the bid withdraws from the provided offer or when he refuses to sign the contract related to its bid. (guarantee is usually for 2.5 % of the total sum of the bid)
- **Performance Bond** – ensures the beneficiary of the guarantee an agreed compensation in case the applicant fails to perform its contractual obligations towards the beneficiary of the guarantee (usually for 5-10 % of the contract amount). This is the guarantee issued to manage buyer's risks when the seller fails to perform its contractual obligations (see also the following example of guarantee letter).
- **Payment guarantee** – ensures the payment for the seller if the applicant fails to perform its contractual payment obligations. This is the **most often used type of guarantee and usually gives 100 % guarantee of the contract amount.** As a rule, it is possible to secure major part of contracts of purchase and sale with such type of guarantees.
- **Advance Payment Guarantee -** ensures the party having made advance payment the reimbursement in case the beneficiary of the advance payment fails to perform its contractual delivery obligations. As a rule, this guarantee is given to 100 % of the advance payment amount.
- **Warranty guarantee –** ensures receiving of financial compensation for the buyer in case something happens to the goods sold by the seller during the warranty period and the seller is not able to repair it (as a rule, up to 10% of the contract value).
- **Customs guarantee –** given to the customs bodies for payment of customs, excise, and VAT taxes of imported goods by the applicant. The amount of the guarantee is 30-100% on the observed period (as a rule, a calendar month) from the amount of imported or temporarily imported (e.g. for processing) taxed goods.
- **Bill of exchange guarantee** – is a guarantee where the bank guarantees buying of a bill of exchange for the amount marked on the bill of exchange.

According to the payment mechanism, the guarantees are divided as follows:

- **On simple demand** – the paid guarantee letter where the beneficiary of the guarantee must submit a written claim for payment for receiving a payment based on a guarantee letter, confirming that the applicant has failed to pay the contractual obligations and has the right to receive payment based on the guarantee. As a rule, the claim is filed through claimer´s bank, who confirms the authenticity of the signatures on the claim.
- **Conditional guarantee** - this is a guarantee where in addition to written claim for payment, the beneficiary of the guarantee letter must submit the documents required in the guarantee letter.

Such guarantee letter reduces the probability of submitting ungrounded claim for payment and is usually the best solution for reaching a mutual agreement. Such additional conditions are especially important in case of guarantees where the applicant of the guarantee does not have enough information about the financial status and reputation of the beneficiary of the guarantee or has no experience in working on the market in question.

For example in case of a payment guarantee used in trade transactions, such documents can be originals of transport documents certifying dispatch of goods such as:

- FIATA documents *FCR, FCT, FBL, FWB and FWR,*
- Bill of lading
- Consignment notes such as CMR, AWB, CIM or SMGS and LWB (sender's copy), etc., according to international conventions, or their copies.

The demand to submit additional documents ensures payments based on guarantee letter only in case the beneficiary of the guarantee letter proves by submission of required documents that he has performed his obligations towards the contract partner.

In case of the strictest conditional guarantees, the condition for making the payment can be either the written consent of the applicant for making the payment or submission of final judicial decision where the beneficiary of the guarantee is an entitled party for receiving the payment based on the guarantee. Such guarantee is better than the usual judicial decision only when the guarantor goes bankrupt.

Guarantee letter is issued according to the laws of the country of location of the remitting bank[25]. Standby documentary credits form an exception; these are the guarantee letters issued in the form of documentary credits (*Standby Documentary credit)* in case of which the legislative basis (subject) is Uniform Customs and Practice of Documentary credits (Publication UCP 600). If the beneficiary of the guarantee is not aware of the legislation of the country of location of the applicant, it is more expedient for him to apply for the credit in the form of standby documentary credit as the laws of documentary credit precisely determine the rights and obligations of parties of each transaction and these do not depend on the legislation of different countries.

The applicant's bank issues warranty letters in three ways:

- Guarantee letter is issued directly to the beneficiary
- Beneficiary is informed about the issued guarantee letter by the intermediation of the correspondent bank and the text of the guarantee letter is communicated to him
- The remitting bank instructs its correspondent bank to issue its guarantee letter for the benefit of the determined beneficiary by giving at the same time its own guarantee for the benefit of the correspondent bank.

[25] In Estonia the **Law of Obligations Act** and the rules of International Chamber of Commerce (ICC) "ICC Uniform Rules for Demand Guarantees, publication No. 758" or abbreviated as URDG 758;

In the two first cases the bank of guarantee applicant guarantees the received compensation in case of failure to perform obligations, and in the third case it is the bank that issues its guarantee letter according to the instructions of the applicant's bank. The second version differs from the first one as the beneficiary's bank informs the beneficiary about issuing the guarantee letter and also confirms the authenticity of the arrived notification. This excludes the risk of counterfeiting and such solution enables to inform the beneficiary about issuing of the guarantee letter.

2.4.4.3. Pledge

Pledge is a limited real right based on which the person in whose benefit the pledge is established has the right to satisfaction of the claim secured by the pledge out of the pledged asset, if the claim has not been immediately performed. *[Law of Property Act]*[26]. **Hence** in case of the pledge, it is a material security (security, movables or immovables) established by one contract partner in benefit of the other party (pledge). Law of Property Act regulates establishing the pledge. The pledge can be:

- **Real security,** if a pledge is established for real estate, also **security mortgage** when a certain claim is secured with it (according to Estonian laws registered in the registry of land register)
- **Commercial pledge** is a pledge established by the entrepreneur to the whole movable property of the company entered to the commercial pledge register without transferring of the possession of the pledged property.
- **Registered security over movables** is a security over movables where the pledged item remains in the possession of the pledger and the pledge is registered by the procedure prescribed by law (e.g. pledging of a means of transport is registered in Traffic Registry).
- **Possessory pledge** is a security over movable in case of which the pledged item is transferred to the possession of the pledgee.
- **Security over movables** is a pledge established on movable property.
- **Retention** is non-return of movable(s) and securities of the debtor legally in the possession of the creditor until the claim is satisfied. Retention presumes the right of retention and presence of a claim. As a rule, this claim must be related to retained movable, but not always.

Application of right of security in its different forms by and in the benefit of forwarder or transport company has been reflected in all international conventions, majority of international legal acts and customary law agreements, e.g. CMR convention, SMGS conventions, Hague-Visby Rules, General conditions of ELEA, etc. In practice, the transport companies mainly use the right of retention.

---

[26] Law of Property Act was passed on 09.06.1993 [RT I 1993, 39, 590] entry into force on 01.12.1993. Date of entry into force of last revision: 30.06.2011 [RT I, 29.06.2011, 6]

2.4.4.4. Applicable legislative measures for collection of a claim for payment

There are several options for realising the collection:

1. **Applicable legislative measures** based on the laws of the countries (in Estonia the Law of Obligations Act), including the procedure for filing claims and jurisdiction. The contract determines the country which legislation shall be used for a specific transaction and which shall be the place of trial. Hence the rules for collection of claim for payment have been determined.

2. The citizen's guide to cross-border civil litigation in the **European Union** is followed in transactions in EU [27], it is based on the EU legislation and offers the following options:
   - **In case** of uncontested monetary claim, the option offered by **European order for payment procedure (regulation 1896/2006)**[28] can be taken into use. In order to formulate a claim, a proof of claim must be filled out in a model form available in all official languages of EU on the website specified in the reference. The claim is filed through the judicial body of the country of location of the debtor (electronically).
   - **European enforcement order (regulation 805/2004)** is a certificate added to the court judgment, judicial decision, or official legal document of the member state, which allows to execute order in another member state.
   - **European Small Claims Procedure (Regulation 861/2007).** This procedure is used for cross-border claims amounting up to € 2,000 (interests excluded). This is generally a written proceeding based on model form[29], to be completed and to which the respondent may reply.

3. Based on the **rules of arbitration of the International Chamber of Commerce** [30] in the court of arbitration of the chamber of commerce of the country agreed by the contract parties.
   Court of arbitration of Estonian Chamber of Commerce and Industry[31] is permanently operating arbitral tribunal settling disputes arising from **private law relationships, including foreign trade and other international business relations**. Settlement of disputes is based on the **rules and regulations of the Estonian Chamber of Commerce and Industry**. Decision of the court of arbitration is **easy to execute in foreign countries** (in all countries acceding New York convention of 1958); decision of

[27] http://ec.europa.eu/civiljustice/publications/docs/guide_litiges_civils_transfrontaliers_et.pdf
[28] Regulation (EC) no 1896/2006 of the European Parliament and the Council of 12 December 2006, which establishes the European order for payment procedure https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do
[29] https://e-justice.europa.eu/content_small_claims_forms-177-en.do
[30] Rules of Arbitration of the International Chamber of Commerce In force as from 1 January 2012 http://www.iccwbo.org/uploadedFiles/Court/Arbitration/other/2012_Arbitration%20and%20ADR%20Rules%20ENGLISH.pdf
[31] Data http://www.koda.ee/index.php?id=14464&highlight=Arbitration,court

the arbitral tribunal made in Estonia are easy to complete in foreign countries. To execute the decision of the court of arbitration in a foreign country, the application for recognition of the court judgement and its execution must be submitted to the state court of the relevant foreign country. The court checks the performance of process norms and relevance of the performed court judgement to laws valid in that country. The decision of the court of arbitration of Estonian Chamber of Commerce and Industry can be performed in all countries having acceded the 1958. New York convention (as of 01.02.2012 there are 142 of such countries). The decisions made in the state court in Estonia cannot generally be executed in foreign countries as easily. Execution of decisions of state courts in foreign countries depends on whether Estonia has concluded the cross-border legal assistance agreement with the country in question. **Decision of the court of arbitration takes effect at the moment it is made**, hence it can be executed from the moment of making it (the decision can immediately be taken to the bailiff and execution proceeding can be started).

2.4.5. Methods for financing of export

In addition to the above mentioned there are several other financing options used in export trade. Their common feature is that the means for financing are granted by the banks or other financial institutions. Three of these methods are **factoring, forfeiting, and finance lease.**

Two of these payment methods, international factoring and international finance lease are subordinated to relevant international conventions. Conventions were prepared by Unidroit (International Institute for the Unification of Private Law in Rome)[32] and adapted on diplomatic conference in Ottawa on May 28, 1988. Below you can find an overview of the three above mentioned financing methods.

2.4.5.1. Factoring

Factoring is a current financing of customers through acquisition of right of claim (receivables). According to the main idea of international factoring, the financial institution (further referred to as **factor)** agrees to release the exporter from financial load involved in export-import transactions (the collection of price from importer) so that the exporter could concentrate on its actual activities, selling its products and marketing. In essence it means that the exporter delivers goods to the importer and the factor pays the price to be received for the goods and demands it from the importer later. As a matter of fact, factoring is nothing else than transferring the claim for payment which determines the payment for goods and provided services to the financial institution – factor.
Hence in case of the factor transaction the works are divided as follows:

[32] http://www.unidroit.org/dynasite.cfm

- Export, involving dispatch of goods and compilation of documentation is the obligation of the exporter, and
- the factor's task is to collect funds (in agreed extent and conditions) from the importer. International factoring has great importance in export-import transaction primarily because it helps to control the exporter's cash flow and gives some security for solving the liquidity problems.

In case the exporter concludes a factoring contract, the following two legal aspects are important for the exporter:

- The legal form of factoring – **disclosed** or **undisclosed**;
- Whether the factor has the right to sell the claim back to the exporter in case the importer is not able to pay for the transaction for some reason (bankruptcy, becoming insolvent).

From the standpoint of legal form, in case of the **disclosed** factoring the buyer is informed (or at least the buyer can be informed) about the fact that in case of a certain transaction, it is a factoring transaction. **Undisclosed** factoring is however a concealed transaction between the financial institution and exporter and the buyer is not informed about it.

If the factoring contract is concluded on **non-recourse** conditions, the factor to whom the exporter's claims are addressed, also bears the crediting risk, and when the insolvency of the importer becomes known, compensation by the exporter is not foreseen. Such type of factoring contract is similar to the financial risk insurance for the exporter. At the same time the contract fees are higher.

If the factoring contract is concluded on **recourse** conditions, the factor has the right to demand covering of its costs in case the insolvency of the importer becomes known or the importer refuses to pay for the goods for some other reasons. Whether the specific factoring transaction has recourse or non-recourse conditions is the matter of agreement between the two participating parties. Sometimes the right of recourse may emerge independent of factoring contract. For example if the exporter ensures goods not conforming to the contract and the contract of sale is cancelled, the factor has the right of recourse which emerges even in case there is no right of recourse foreseen in the contract.

Direct and indirect factoring

Factoring may be either direct or indirect. In case of a direct factoring only one factor is involved in the transaction – exporter's factor in the exporting country with whom the exporter has entered into the factoring contract. In case of an indirect factoring there are two factors. In addition to exporter's factor there will be also importer's factor in the importing country. In case of a direct factoring (which contains also demanding of a price), the exporter's factor enters the import country and contacts the importer directly. In case of an indirect factoring the importer whom the factoring is addressed makes payments to the import factor in its own country without having contact with export factor. Import factor pays to the export factor who in turn organises (or already has previously organised) payment to the exporter. There is no contractual relationship between the exporter and the import factor. The advantage of the indirect factoring compared to the direct one is

that both – the import as well as export factor - deal with local customer through which they succeed to assess customer's financial status and capability better.

In case of handling of factoring transaction as one possible payment method it must necessarily be mentioned that the factoring contract is independent of the export's sale of contract and can be observed separately like the documentary credit transaction. Contract of sale is for the banks only an additional document. Legislation of factor's country of location usually applies for factoring contract.

Disclosed factoring

The principle of the disclosed factoring is as follows. The factor concludes a factoring contract with the exporter during which he agrees to buy from him certain specific short-term proprietary rights of claim. The importer is informed about conclusion of a factoring contract and that the payment for goods is made to the factor and not to the exporter. The receivables confirmed by the importer is usually transferred to the factor without the right of recourse.

Other receivables are usually transferred based on the right of recourse. Factoring agreements are often made based on the turnover of the transaction and factor's commission fee is calculated from it. In case of such agreement the exporter is obliged to offer all its proprietary rights of claim concerning the transaction to the factor. In addition the factor may carry out other possibilities of crediting of the exporter. The crediting options shall be agreed between the parties. In addition, the factor can be authorised to perform other tasks, e.g. organising the in-house accounting for the exporter. In this case the exporter gives its invoices to the disposal of the factor so that the factor could perform these tasks.

In case of factoring transaction it is important to agree about arrival of payment. The factor may pay to the exporter on a calculated average transaction day. Such factoring is called **average maturity factoring.** According to this agreement the exporter gets secured payments periodically on agreed dates and not on optional times over the whole payment period.

Undisclosed factoring

The factoring form most commonly used in global trade is invoice discounting. According to the main idea of the undisclosed factoring, the exporter shall hand over to the factor the purchase price paid by the importer. In case of undisclosed factoring the factoring transaction is not disclosed to the importer. The buyer still pays the export price directly to the seller. The factoring contract ensures that the seller receives payment as the confidant of the factor and must allocate the received sum on account specially opened for that purpose.

Some financial institutions use several different options which do not contain the disclosure of the financial transaction to the importer. In such alternative transactions it is stated that the exporter will sell the goods immediately to the financial institution for money and then the financial institutions participating in the transaction authorise the exporter as a concealed and non-official

agent to distribute the goods. Distribution to the importer usually takes place based on credit conditions. In case of such transaction, the exporter receives payment from the importer as an agent of financial institution, and must forward it to the factor.

2.4.5.2. Forfaiting

Forfaiting *(in French - a forfeit)* (*forfeiter* – a person giving away the debt) means buying of a debt-claim in negotiable[33] instrument: draft, bill of lading, called note or promissory note or bond debt claim from the creditor on non-recourse conditions. Buyer is known as a forfaiter and it decides to forfeit from the right of recourse against the creditor if he cannot get the payment from the debtor. However, the forfaiter buys the negotiable instrument only in case the bank gives guarantee about the proper condition of it. This guarantee is given in the form of "an aval" or in the form of a negotiable instrument, or in the form of a separate bank guarantee which guarantees the obligations in conformance to the negotiable instrument. Buying of the negotiable instrument by the forfeiter naturally takes place with a certain discount. Forfaiter is usually a bank, financial institution, or a discount company.

Essence of forfaiting

According to the main idea of forfaiting, the obligation of a debtor, with a payment date in the future, can be immediately collected as money by the creditor by selling the obligation to the forfeiter. The forfeiter agrees to buy the claim on condition that it is guaranteed by the third party. Forfaiting is used for two types of transactions:

- In case of long-term financial transaction in order to obtain the liquid means, and
- in case of export transaction to help the export in cash flow situation where credit is allowed for the importer.

In international trade, the most important is the latter, so we will take a closer look.

The main steps of the forfeiting are as follows:

- In international trade the exporter gets the bill of exchange or promissory note from the importer, the payment date arrives at the moment described in the document.
- These negotiable instruments are confirmed by the importer's bank who guarantees their performance.
- Negotiable instruments are transferred by the exporter to its bank without right of recourse.
- In that case the exporter's bank acts as a forfaiter.

The forfaiting transaction needs to be agreed between the exporter and the importer upon conclusion of a contract of purchase and sale and it is usually deemed as concluded when the agreement with banks is reached. Forfaiting transactions are especially relevant in case of export of capital-intensive goods where the contract foresees the advance payment during installation in a long time period (two to five years). The banks prefer the bonds or promissory notes as payment documents or the drafts.

The forfeiter is interested in the guarantee which contains the negotiable instrument bought by him.

[33] In special literature also the term negotiable instrument is used. The first term sounds better in Estonian.

The documents generally give a superficial guarantee, hence it is in forfeiter's interest to be informed about additional details about the observed transaction.

The contract between the exporter and the forfeiter usually contains also a clause about the applied law. This offers protection in case of possible dispute against contingencies accompanying applicable laws.

Primary and secondary forfaiting transaction

Forfeiter may in turn negotiate negotiable instrument which it has bought during the forfeiting transaction. The aim of such operation is to diversify risks taken with transactions. For this reason, the financial circles define the **primary and the secondary** (or follow-up) forfeiting market and refer to the original forfeiting as the primary one. As handled above, the exporter shall not be protected against the right of recourse in case it is not able to deliver the goods to the importer for some acceptable reason.

2.4.5.3. International finance lease

Essence of finance lease

One option for financing export transactions might be the conclusion of international lease contracts. Such transactions are common in case of capital-intensive goods like vessels, planes, containers, mineral resources, and research equipment of oil fields and other. Lessee who wants to use such equipment must pay capital lease payments to the lessor. Lease period may be very long considering the cost of such goods, so the lessor bears a significant financial risk.

In case of finance lease there are two different types of lease:

1. **Operational leasing** is a leasing transaction where the lessee will use the assets during the leasing period and after the termination of the contract returns the assets to the lessor in the residual value determined in the contract.
2. **Capital leasing** Capital leasing is a leasing transaction where the lessor pays the total cost of the assets during the leasing period as instalments and becomes the owner of the assets after the termination of the transaction.

If the owner of the sold assets is ready to bear risks, he himself will often act as a lessor. Thus, a usual leasing is a transaction concluded between two parties (lessor and lessee). In case the owner does not want to bear the financial risk, the transaction is performed through finance lease. In that case the bank or some other financial company (e.g. leasing company) steps between the leased resources and the user. The owner (often known as the supplier) sells the goods to the bank (or finance intermediary) and the bank as the financer acts in this situation as the lessor and user as the debtor or lessee. Transaction covering three parties is formed.

In case of a finance lease **export and import leasing** can be differentiated. **Export leasing** is a situation where the foreign partner leases some equipment from a domestic manufacturer through mediation of a leasing company. **Import leasing** means that a domestic company leases the

equipment from a foreign partner through mediation of leasing company. In Estonia the import leasing is prevailing in international finance lease transactions. The spread and perspective of export leasing primarily depend on if and up to which volume Estonia is capable of providing such equipment which the foreign partners would like to lease.

2.5. Documents for realising the contract of purchase and sale (sender's documents)

2.5.1. Generally about documents

Documents are part of the information flow accompanying the movement of goods. Information is necessary in order to be able to take the management decisions. The whole logistical information flow inside the system must reach the information users on a due time and be clear of unnecessary information or noise. The aim of the documents is to minimise needless information, or $\mathbf{r}_{\text{noise i}} \rightarrow$ **min** and reduce the time consumption and resources for information processing. One solution is to standardise information flows and this has been done in respect of the documents. This is the aim of the documents which in their form provide only information necessary for decision making.

Compilation of each document is based on its goal and role in the process and the information to be delivered is determined accordingly. The document form already communicates information which is not directly described in filling out and reading the document but follows the legal act establishing the document (e.g. CMR waybill is based on CMR convention, TIR-Carnet on TIR convention, etc.).

Classification of documents

Documents can be classified in several ways. First by the aim they have upon realisation of the contract of purchase and sale of goods:

1. **Documents necessary for export of goods (sender's documents)**; in turn divided into:
   - Goods invoices
   - Certificates (including documents necessary for characterising goods (object of the transport) and performance of transport process; certificates of origin, weight certificates, certificate characterising special properties of goods like certificates of hazardous goods, sanitary certificates, certificate of receipt and delivery of goods, etc.).

2. **Transport documents**
   - Bill Of Lading (BL)
   - Waybill (CMR, AWB, Sea/Liner WB, CIM WB, SMGS)
   - Lists of goods like manifests and packing lists
   - Forwarders documents for operating in multimodal supply chains (FIATA documents: FBL, FWB, FCR, FCT and FWR)

3. **Documents necessary for registering obligations involved with goods or the customs documents**
   - For addressing the customs procedures SAD
   - Reflecting customs securities like TIR Carnet, ATA Carnet, TAD, etc.

4. **Notifications**
   - Instructions and operational manuals (e.g. FFI, *Shipper's Instructions*, etc.)
   - Authorisation documents

5. **Documents necessary for participating in the transport process:**
   - Activity license and other licenses (e.g. license card for vehicles of international transport, customs agent's certificate, license of commercial marine transport, etc).
   - Registration certifications of means of transport (e.g. registry certificate of Traffic Registry and certificate about passing the technical inspection)
   - TIR certificate for the cargo space (trailer, container)
   - ATP certificate for refrigerator unit cargo space
   - ADR certificate for transport of hazardous goods
   - Driver's license for confirming the driver's qualification, etc.

6. Bank documents for controlling of **financial transactions** (documents for applying for collection transaction, documentary credits and their applications, bills of exchange, guarantee letter)

This chapter primarily describes the **documents needed for export of goods (sender documents)**. **The rest of the documents will be described in next chapters.**

2.5.2. Goods invoices

2.5.2.1. Invoice (commercial invoice)

Commercial invoice compiled for commercial deliveries[34] must in addition to all sorts of information reflected in the main clauses of the contract of purchase and sale inform besides the buyer of goods also other persons assisting to implement the contract like customs officials, forwarders, transportation companies, and, if possible, also the representative or agent of the seller. Information on the invoice should be presented as accurately as possible since this information is the basis for several documents necessary in the export trade. In the stage of the transaction agreements, the buyer should inform the seller about the local requirements concerning the invoice. The form-related requirements of invoice of **import goods** of the European Union are prescribed in

[34] The term **commercial invoice** means the list of goods with the invoice (The Dictionary of Standard Estonian)

Community Customs Code[35] and its implementing regulation[36]. Invoice **is always compiled according to the requirement of the country of destination.**

The invoice should determine:

1. seller's and buyer's name and location
2. the issue date of the invoice
3. name(s) of goods
4. information about units of goods (sack, box, etc.), their labelling, numbers, quantity, type, and gross weight
5. volume of goods in gross as well as net weight
6. goods nomenclature code(s) (in case of European Union internal trade, the combined nomenclature code CM or 8 digit code, in case of third countries also the harmonised nomenclature HS code or 6 digit code)[37];
7. price information of goods (unit price and total price and place of determining of price)
8. discounts and the reasons for discount (basis)
9. delivery terms
10. terms of payment
11. buyer's VAT register number (number code issued by Estonian Tax and Customs Board during registration as person liable to VAT)
12. country of origin and country of destination
13. signature

In clauses 2 to 6 the object of contract of purchase and sale is described according to the requirements established in the country of destination. In clauses 7 and 8 the data reflecting the price together with determination of price currency is described. Delivery terms (usually in accordance with Incoterms, see chapter 2.3) and terms of payment according to agreement (see chapter 2.4).

In some cases the invoice must be issued on a special form approved by the agencies of the country of the buyer. Bank requisites should be clearly described on export invoices since the delays in payment cause insecurity and additional costs. It is customary to include the SWIFT address in bank requisites.

In order to harmonise the documents, it is recommended to use the invoice forms based on **UN layout key**[38] [39].

[35] Regulation (EEC) No 2913/92 of the EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Community Customs Code and Regulation (EC) No 648/2005 of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

[36] REGULATION no. 2454/93 of the COMMISSION (EEC) laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 and COMMISSION REGULATION (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

[37] The codes can be found on the homepage of Estonian Tax and Customs Board (ETCB) from the Estonian Master Tariff System (EMTS) (described in more detail in the second part of this study material) https://vaarikas.emta.ee/emts/index.jsp

[38] UNITED NATIONS LAYOUT KEY FOR TRADE DOCUMENTS *http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec01/rec01_ecetrd137.pdf*

2.5.2.2. Pro Forma Invoice

An invoice not for payment. Used in the course of drawing up of a contract. An exporter issues the pro forma invoice before the delivery and it is used:

- as an offer when making a proposal;
- for making general declaration;
- for applying for import licenses and quota;
- issuing of documentary credit, etc.

2.5.2.3. Requirements of the agencies of countries of destination

Based on the importance of the invoice, there are numerous departmental legislative requirements which must be met. Such requirements include, for example

- number of copies of the invoice to be submitted.
- whether it should be confirmed and legalised
- whether it needs a confirmation regarding the country of origin of the exporter or value of the transaction
- whether the exporter needs to sign the invoice
- whether the electronically communicated invoice is accepted, and if yes, on what conditions.
- whether the **consular invoice** is required, etc.

Confirmation and legalisation

In case of export, the further located countries may demand legalization of the invoice, country of origin, bill of lading, health certificate, etc. The aim is to ensure the validity of the information included in documents. Local chamber of commerce (Estonian Chamber of Commerce and Industry) generally gives approval with the following text ***"Full confidence may be placed in the declaration above"*** with the date and seal of the chamber of commerce under it. Copies of relevant documents must be brought when applying for the approval.

Legalisation is performed by the representation of the country of destination (embassy or consular service). In case approval and legalisation are required, **first the approval of the chamber of commerce** should be acquired. In some cases the Ministry of Foreign Affairs legalises the document after approval and after that, the legalisation is asked from the representation. Some representations accept legalisation of a document also without the intermediate legalisation of the Ministry of Foreign Affairs. Legalisation fees are different and depend on the country, size of the transaction, etc.

Exporter's approval. Sometimes it is required that the invoice should also contain the approval of the exporter about the value of goods and the country of origin. Approval text depends on the requirements of the country of destination.

---

[39] I also recommend to examine UN layout formatting specification for UBL Invoice instances Author: G. Ken Holman *http://oasis-open.org/committees/ubl/lcsc/0p70/fs/UN380Invoice.html#d0e18*

2.5.2.4. Consular Invoice

Consular invoices are mainly required for exporting to Latin American countries. The invoice is prepared on a special form received from the consulate of the relevant country. The consular invoice and required number of copies must be legalised after completion in the consulate. The forms are chargeable. Consular invoice does not replace actual invoice which must be prepared separately according to relevant requirements.

Often only the invoice is not sufficient for performance of the transaction but more documents should be added and these are certificates added by the seller. These are inspection and health certificates and certificates characterising special properties of goods. The documents may include for example pre-shipment inspection certificates, quality certificates, weight certificates, health certificates, certificates of transport of hazardous substances. Such certificates are usually issued by the impartial inspection or public authorities of the country of origin before actual loading. The certificates are necessary primarily for performance of requirements in the country of destination.

2.5.3. Health certificates

Health certificates are necessary for certifying the standards established for protection of inhabitants by the health protection bodies of the country of destination and, as a rule, the health certificates conform to the requirements of these countries. In Estonia, the export and import of animals and products of animal origin is regulated by the Act of Trading with Animals and Products of Animal Origin and Veterinary Supervision of their Import and Export[40]

This act complies with relevant legal acts of the European Union.

The exported live animals and products of animal origin must conform to the veterinary requirements regulating the trade and veterinary requirements presented by non-EU countries. Delivery of live animals and products of animal origin foreseen for export from one member state to another must conform to the veterinary requirements accordingly. Veterinary requirements regulating transport of live animals and products of animal origin foreseen for export within the member states are established by the Minister of Agriculture considering the legislative requirements of the European Union.

Product of animal origin is defined for the purpose of the law in the Regulation (EC) No 853/2004 of the European Parliament and of the Council which prescribes the hygiene rules for the products of animal origin (ELT L 139, 30.04.2004, p 55–205); product of animal origin is prescribed in

[40] Loomade ja loomsete saadustega kauplemise ning nende impordi ja ekspordi veterinaarjärelevalve seadus (Act of trading with live animals and products of animal origin and veterinary supervision of their import and export) Passed on 22.04.2004 RT I 2004, 34, 236 entry into force 01.05.2004, partially on 18.10.2004. Amended five times, last on 27.01.2011 RT I, 23.02.2011, 3 entry into force 01.01.2012 https://www.riigiteataja.ee/akt/12796936?leiaKehtiv (In Estonian)

clause 8.1 of Annex 1. [RT I, 02.03.2011, 1 – entry into force 04.03.2011] [41] Veterinary requirements and veterinary inspection principles established for products of animal origin are adapted for foodstuffs of animal origin and product of animal origin not used for food or supervision of these, if not otherwise provided for in the law. Provisions regulating the products of animal origin are applied also for animal by-products and products made of these by-products. Live animals and products of animal origin listed in Annex to Commission Decision 2002/349/EC which lays down the list of products to be examined at border inspection posts (EEA L 121 08.05.2002, p 6–30), and plant products listed in Annex IV of European Commission Regulation 136/2004/EC, must be imported under veterinary and zoo technical inspection.

Issuing of health certificates [42] and inspection belongs to the competence of Veterinary and Food Board[43] operating in the administration area of the Ministry of Agriculture and the application procedure and examples of issued certificates can be obtained from their homepage.

Import. In case of **import**, in addition to checking the certificate issued in the country of consignment, the inspection body demands from the importer also registration, based on the **forms of import registration document forms:**

1. Form of information about cargo imported from EU internal market into Estonia
2. Form of notification about registration the country of destination as the recipient[44]
3. Prior notice about importing of live animal to the border point (with instructions for filling out the prior notice)[45]
4. Prior notice about importing product of animal origin to the border point – CVED (part I must be filled out; instructions for filling out included)[46]
5. Prior notice about arrival of the container to the border point (instructions for filling out included).

The determined border point must be notified at latest 24 hours before arrival of goods to the border point.

Requirements for health certificates by different commodity groups can be found on the homepage of Veterinary and Food Board. Certificate must conform to the following requirements:

a) It must be an original copy and numbered
b) Content and form must comply with an example issued for import of relevant goods
c) It must be signed and bear a seal of the official of the exporting country who can be identified as a competent person (clearly readable name, position, and seal of the national department).

[41] https://www.riigiteataja.ee/akt/102032011001

[42] http://www.vet.agri.ee/?op=body&id=120 Taotlus sertifikaadi väljastamiseks ja loomade (kaasaarvatud paljundusmaterjal) väljaveol (Application for issuing a certificate for export of animals (including semen, ova and embryos) (In Estonian)

[43] http://www.vet.agri.ee/?op=body&id=315

[44] http://www.vet.agri.ee/?op=body&id=120 TEADE SIHTKOHA VASTUVÕTJANA TEGUTSEMISE KOHTA (NOTIFICATION ABOUT ACTING AS A RECIPIENT OF THE POINT OF DESTINATION) (in Estonian)

[45] http://www.vet.agri.ee/?op=body&id=120 KAUBASAADETISE SAAMISE TEATIS (¹) ELUSLOOM (NOTIFICATION ABOUT RECEPTION OF A CONSIGNMENT (¹) LIVE ANIMAL (in Estonian)

[46] http://www.vet.agri.ee/static/body/files/15.Loomne%20saadus.pdf (in Estonian)

d) It must be consistent and fully filled out
e) Prepared for one recipient
f) In addition to the language understandable in the country of origin, it must also be compiled in an official language of the EU member state of destination. The member state, through whose border point the goods are delivered to EU, has the right to demand the translation.
g) Information on a certificate, consignment notes, and in part I of CVED must be identical.
h) The certificate can be filled out either as printed or handwritten but it must be legible.
i) Strikethrough can be used for corrections, but each correction must be confirmed with the signature and seal of the person issuing the certificate.

Trade of goods inside European Union Minimum requirements for the consignment note of goods[47] for trade of goods inside European Union. Documents accompanying food of animal origin and raw material for food:

1. Health certificate (in exceptional case for nomenclature of goods established by EU) See an example of certificate of meat products sent to Sweden and Finland[48]
2. Consignment note with the following information:
   - Name and address of residence of the holding of origin, name of the country of origin and country of dispatcher, health mark or data of health mark (incl. approval number of establishment and letter combination of the name of the country of origin – Estonia EE).
   - Name of goods (in case of meat – type of animal)
   - Thermal condition (cooled/frozen, storage temperature at transport) of the goods
   - Volume, net
   - Number of packages or carcases (pcs), including method for cutting up in case of unpackaged parts of carcase (half-carcase, parts of carcase with their anatomical names – shoulder, rump, etc.))
   - Date of freezing in case of frozen meat / minced meat
3. Heat treatment method depending on the character of the product
4. Name of a competent establishment
5. Certificate or delivery note will be issued in the language of a dispatching country and in Estonian (or English).
6. Delivery notes must be numbered.

Export. Exported live animals and products of animal origin must conform to the veterinary requirements prescribed for their trading and requirements presented by the non-Community country. Certificate forms can be found in the homepage of Veterinary and Food Board by search

[47] Data from Veterinary and Food Board
[48] Model commercial document for the consignment to Finland and Sweden of meat from bovine or porcine animals or meat from poultry, including minced meat
http://www.vet.agri.ee/static/body/files/28.Kaubadokumendi%20n%E4idis%20Soome%20ja%20Rootsi%20saadetava%20veise-%2C%20sea-%20v%F5i%20kodulinnuliha%2C%20sealhulgas%20hakkliha%20jaoks.pdf

term: "Certificates. Export to non-Community states"[49] If the export takes place via some other member state, the live animals and products of animal origin must conform also to the veterinary requirements valid in that state. In export, the certificate is issued according to the requirements of the country of destination and it is different for each commodity group.

2.5.4. Phytosanitary (plant health) certificate

Majority of the countries demand that the imported plants, plant products, and other plant materials conform to the requirements established in that country. The state establishes the plant health regulations in their legislation about imported materials based on local environmental and economic conditions. One of the requirements for import is that the plant health certificate issued by the state supervision institution of the exporting country is accompanying the consignment of plants and plant products.

According to the procedure established in Estonia, the export of plants and plant products takes place upon existence of **plant health certificate issued in the point of origin of the goods** or in case of food of non-animal origin, upon existence of other document certifying health safety issued on request of the country of destination. The procedure for issuing that document is established in Division 4 of **the Plant Protection Act**[50] with a title: Phytosanitary certificate and plant passport. According to the specified law, the Minister of Agriculture establishes formal and substantive requirements for phytosanitary certificates and the procedure for issue, replacement, and preservation of phytosanitary certificates. This regulation is called: **Formal and substantive requirements for phytosanitary certificates and the procedure for issue, replacement, and preservation of phytosanitary certificates[51].**

A **phytosanitary certificate** is a document that certifies the phytosanitary conformity of plants, plant products or other objects and is issued upon conveyance of plants, plant products, or other objects from Estonia to a non-Community country. Issuer of phytosanitary certificate must apply supervisory measures and ensure that the exported consignment conforms to the plant health requirement valid in the country of destination. The exporter must bring the consignment into conformance with requirements. In case of a consignment from the non-Community country to Estonia this is performed on the basis of procedure "Conveyance of plants and plant products form the third countries to Estonia[52]", established by the Ministry of Agriculture. Phytosanitary certificates or phytosanitary certificates for re-export issued by the competent authority of the country of origin must conform to the requirements of **European Commission Directive**

[49] http://www.vet.agri.ee/?op=body&id=144

[50] Plant Protection Act[1] Passed on 21.04.2004 RT I 2004, 32, 226 entry into force on 01.05.2004 http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X70049K3&pg=1&tyyp=X&query=taimekaitseseadus&ptyyp=RT&keel=en

[51] Regulation of the Minister of Agriculture: Formal and substantive requirements for phytosanitary certificates and the procedure for issue, replacement and preservation of phytosanitary certificates Passed on 24.05.2004 no 98 RTL 2004, 68, 1126 entry into force 01.06.2004. Entry into force of the last release on 01.01.2010 https://www.riigiteataja.ee/akt/13243356 (in Estonian)

[52] Taimede ja taimsete saaduste ühendusevälisest riigist Eestisse toimetamine (Conveyance of plants and plant products from the third countries to Estonia) http://www.pma.agri.ee/index.php?id=104&sub=133&sub2=260 (In Estonian)

2004/105/EC which determine models of official phytosanitary certificates which must accompany plants, plant products, or other objects from third countries, and are listed in Council Directive 2000/29/EC[53].

Consignments of plant materials delivered to and from Estonia are re-packaged, stored, divided into parts, or if more than 14 (fourteen) days have passed from issuing the phytosanitary certificate of the country of origin of consignment during its stay in Estonia, the possessor of the goods must apply for issuing of the phytosantiary certificate of re-export for the lot before its re-dispatch.

The phytosanitary certificate and phytosantiary certificate of re-export is issued according to the procedure established by the Ministry of Agriculture: „**Inspection of conformance of plants, plant products and other objects to the plant health requirements of the country of destination and issue of phytosanitry certificate and phytosanitary certificates of re-export[54]“;** in order the documents to be issued, a request must be submitted to Agricultural Board[55] inspection officer, including information about:

- Names and volumes of plants, plant products, or other objects.
- Manufacturer’s plant health register number or, in absence, manufacturer's name and address
- Consigner’s (exporter’s) name and address or his number in the plant health register and his contact information.
- Name and address and country of destination of consignee
- Type of means of transport and its number or other feature.
- Point of entry of country of destination
- Due term for delivery from Estonia to the third country.
- Information on location of the dispatched consignment

Phytosantiary certificate is issued on condition that the lot of goods conforms to the requirements of the country of location and is not contaminated with dangerous pests established in legislation of the country of origin. Phytosanitary certificate is issued per one consignment and it is valid only for certifying the appropriateness of the volume of goods determined in that certificate. The phytosanitary certificate cannot be issued earlier than 14 days.

Plant passport is a document or an official label, which certifies the phytosanitary conformity of plants, plant products, or other objects upon their movement within the territory of the European Union. After a consignment of plants, plant products, or other objects which are conveyed from a third country to Estonia has undergone inspection, the phytosanitary certificate issued with regard to such plants, plant products, or other objects shall be replaced by a plant passport.

[53] Official Journal of the European Union - OJ L 319, 20.10.2004, p 9–14, Annex I.

[54] Inspection of conformance of plants and plant products to the plant health requirements of country of destination and issue of phytosanitary certificate or a phytosanitary certificate for re-export http://www.pma.agri.ee/index.php?id=104&sub=133&sub2=260 (in Estonina)

[55] http://www.pma.agri.ee/index.php?main=1

2.5.5. Documents or certificates necessary for transport of dangerous goods

Certificates of dangerous goods form a separate area and depend of the used type of transport. Requirements established for those certificates depend on international conventions and agreements according to which the transport is handled.

- Road transport **ADR**[56] - *Accord européen relatif au transport international de marchandises dangereuses par route* – international regulations concerning international carriage of dangerous goods by road

- Rail transport **RID**[57] - *Regelement international concerment le transport des marchandises dangereuses par chemins de fer* – inernational regulations concerning the International carriage of dangerous goods by rail, and SMGS[58] Annex 2 of agreement – regulations of carriage of dangerous goods by the rail of countries who have joined the SMGS agreement

- Marine transport **IMDG**[59] - *International Maritime Dangerous Goods* – regulations for international marine transport of dangerous goods

- Air transport **RAR** - *Restricted Articles Regulations* – international regulations of carriage of dangerous goods by air and *IATA Dangerous Goods Regulations* IATA DGR[60]

Manufacturer issues the certificates of dangerous goods and it must be issued in official languages of all the countries which will be passed through during the transit. In addition to the specified certificates, the prior notices/certificates of consigners are used which enable to book the cargo space.
Substance is identified based on so-called UN code.

UN codes always consist of four digits. UN code itself does not say anything about the properties of the substance (except the numbers of explosives which always start with 0 (zero). The code helps in acquiring of additional information since lots of keys are hidden in UN codes.

1. The **marine transport** generally uses complete system of documents for taking better control over the transport of dangerous goods. The specified system follows official rules demanding that the possessor of dangerous goods must submit a written explanation for characterising of the goods before starting the transport and declare it with submission of required documents.
   - All clauses of **Declaration – DGD form** must be duly filled out. The form must be signed by the person responsible. Numbers of all containers, pallets, trailers, cisterns, and vehicles must be entered into the form, provided they are known. Shipping company/agent fills out

[56] http://www.unece.org/trans/danger/publi/adr/adr2009/09contentse.html
[57] http://www.mtitc.government.bg/upload/docs/RID2009.pdf
[58] http://www.evr.ee/?id=1172 keyword SMGS agreement
[59] IMO IH200E International Maritime Dangerous Goods (IMDG) Code, 2010 Edition (inc Amendment 35-10), 2 Volumes (IH200E) International Maritime Organization / 2010 / ISBN: 9789280115130
[60] Dangerous Goods Regulations The IATA Dangerous Goods Regulations are published by the IATA Dangerous Goods Board http://www.iata.org/ps/publications/dgr/Pages/software.aspx

Shipment Approval and Booking reference No. Original of DGD form must be delivered to the shipping company/agent without delay but at least 24 hours before loading the vessel.

- When the lot containing dangerous goods is packed into transport units, the person responsible for packaging must deliver the **Container/Trailer Packing Certificate (CTPC).** In case there is only one parcel containing dangerous goods in the cargo unit, the CTPC must be handed over on signing the confirmation on **DGD form.** If several lots containing dangerous goods are packed into one transport unit, the packer must fill in either a special CPTC form or, if possible, confirm with CPTC on DGD form by signing it and enclosing the copies of signed DGD forms concerning the lots of dangerous goods contained in the transport unit.
- The consigner must give instructions concerning the loaded dangerous substance in case of hazardous situations and first aid. The best option is to mark on the DGD form references to the tables handling such substances in publications Emergency Procedures for Ships Carrying Dangerous Goods and Medical First Aid Guide or give instructions about the hazard situation and first aid either on Transport Emergency Instruction (TEI) form or some other form which contains information at least in the same extent that the specified form of the shipping company.
- When a limited volume of dangerous substances are dispatched, the Dangerous Goods Declaration/Limited Quantities form must be used.
- **Preparation of bills of lading or liner waybills** must pay attention to the fact that the dangerousness of the goods is understandable also in the specified documents. **The grade of hazard and UN numeric code must be marked in the bill of lading or waybill.** It must also be kept in mind that in case of a dangerous freight, the bill of lading of the bearer cannot be used. Dangerous goods may be included also in the joint bills of lading of forwarders together with safe mixed goods. **Independent transport document is prepared for the dangerous delivery.**

2. **Road transport** proceeds similar approach. The documents accompanying the transport must consider that in addition to the existence of documents regarding the rules during transport, the carrier of dangerous goods must have the following documents:
    1. Waybill indicating:
        - Substance name
        - ADR class
        - Place in ADR substance register, also a letter indicating it, if needed
    2. Written safety rules and certificates (safety cards) about the transported dangerous goods.
    3. Relevant transport permission with the right to handle dangerous cargo

Consigner or manufacturer of the transported substance must prepare or obtain safety cards for each substance or thing or their classification. The consigner must deliver the safety cards to the operator of domestic as well as international transport process on time so that there will be time

for supplying of the vehicle with proper documents and informing of the driver of the vehicle. The safety card must be in the languages of all countries related to the transport. The safety cards are kept in the cab of the vehicle during transport.

The safety instructions must contain the following information

- The damage which the transported dangerous substance may cause and necessary control and protection measures.
- Actions and first aid in case of an accident, especially when people are in contact with dangerous substances.
- Actions in case of fire, information about which fire extinguishing agents cannot be used.
- Measures in case the vehicle gets damaged or breaks down and dangerous goods end up on the road or in the environment.

Operator carrying out the transport process must guarantee that the driver of the vehicle knows these instruction and is able to take action, if needed.

3. Transport of dangerous substances on **rail** follows the same classification and, as a rule, also the same rules as road transport. If transport of some substance is forbidden in the rules, the rule must be followed. Hazardous substances in rail transport are classified similar to ADR classes according to RID convention or according to Annex 2 of SMGS.

4. The requirements for transport of dangerous substances are the strictest for **air transport.** Such requirements/rules contain big number of rules of **International Air Transport Association**[61] **– IATA** which ban transport of dangerous substances by air. There are also restrictions for other substances concerning the volume of the goods transported at once. Such restriction alternate depending on whether the means of vehicle will carry also passengers or only goods. Packaging rules are specially particular since the under pressure caused by the height of flight increases the leakage risk. Some substances which otherwise are not considered as dangerous, e.g. aerosol packages, cause problems in air transport. Dangerous are considered to be the substances or items which may damage or endanger other parcels, passengers, or the plane. Yearly publication of IATA, Dangerous Goods Regulation, particularly defines the dangerous goods, their maximum volume, packaging method, handling, and labelling. These rules are based on ICAO guidelines which in turn are based on recommendations approved by UN. If the parcel contains one or more dangerous substances, the carrier demands the certificate compiled and signed by the consigner: ***Shipper's Certification for Dangerous Goods***[62]. This is a valid document to certify that the sender has adhered to all regulations and rules.

[61] Additional information at http://www.iata.org/

[62] http://www.src.wisc.edu/users/SRC_Policies/Shippers_Certification_Form_2-5-2010.pdf

2.5.6. Certificate of origin

Certificates of origin [63] are used in case it is intended to gain from customs preferences agreed in the transnational trade contracts. Hence in several countries, it is obligatory to present a certificate of origin which also includes information about the country of origin. Issuing of certificate of origin is often trusted to the chamber of commerce of the seller's country and regarding free trade agreement certificates of origin and explanations, to the customs agency of the seller's country.

2.5.6.1. EUR.1 Movement certificate

Movement certificate is a certificate about the country of origin used in case of majority of contracts.

- Not used only in contracts with Turkey and GSP transactions
- Dispatch related certificate, issued based on a written application
- Exporter or an authorised representative acting under his responsibility prepares and signs the application and certificate form; the procedure of application can be found on the homepage of Tax and Customs Board.
- The customs officials confirm the certificate or the exporter confirms with a special simplified seal
- validity period varies in different contracts, most generally the period is four months.
- May be issued also afterwards; as a copy or a replacement certificate also when referred that the earlier certificate is not confirmed in the country of destination due to technical problems, e.g. due to faulty or incomplete certificate.

2.5.6.2. EUR-MED certificate

Mediterranean countries step by step join the Pan-European free trade network and a new expanded Pan-Euro-Mediterranean (PEM) cumulation system of origin has been formed[64].

Movement certificate EUR-MED and invoice declaration EUR-MED are used when cumulation is intended to be applied or is applied with other than PEM cumulation system country. It must be marked on the EUR-MED certificates of origin, whether the cumulation has been applied and with which countries.
The form and application conditions of EUR-MED certificate and EUR1 do not differ much.

Countries belonging to cumulation system

Pan-European free trade network handles the origin cumulation between European Community and Norway, Switzerland, Iceland, Liechtenstein, and Turkey. This cumulation is now expanded and

[63] Current status of application of certificates of origin at:http://www.emta.ee/index.php?id=3281 under keyword about certificates of origin (in Estonian)
[64] http://www.emta.ee/public/PEV_t_iendatud_01_07_2009.pdf

Faroe Islands, Morocco, Algeria, Tunis, Egypt, Israel, Jordan, Lebanon, Syria, west bank of Jordan and Gaza strip will join gradually.
Hence the following countries are covered with Pan-Euro-Mediterranean (PEM) cumulation:
European Community, Norway, Switzerland, Iceland, Liechtenstein, Turkey, Faroe Islands, Morocco, Algeria, Tunis, Egypt, Israel, Jordan, Lebanon, Syria, west bank of Jordan and Gaza strip.

Conditions for applying of cumulation
In order to belong to the expanded free trade network and the origin cumulation system established with it, the Mediterranean countries have concluded or they need to conclude free trade contracts with Pan-European cumulation network countries with the same origin rules. In addition, the contract network presumes that the Mediterranean countries conclude the free trade contracts also between themselves with the same origin rules.

2.5.6.3. Invoice declaration

All exporters can compile the **invoice declaration**[65] for such consignment which consists of one or more packages which contain the products with origin status, **the total value of which does not exceed € 6,000** on condition that the exporter who prepares the invoice declaration, must be ready to submit all necessary documents certifying the origin status of relevant products on request of customs or other competent governmental institution of export country at all times. The exporter writes handwritten original signature on the invoice declaration.

If invoice declaration is used, the following conditions must be performed:

- One invoice declaration is filled out for each consignment
- If the goods in the consignment are already checked based on the origin status products in the export country, the exporter can refer to that check in the invoice declaration.

2.5.6.4. Supplier's declaration

Supplier's declaration[66] is a document certifying origin of the goods used between the supplier and exporter in the trade of goods. In the supplier's declaration the company delivering goods gives information about the origin status of goods. In case of goods with preferential origin status the supplier confirms the country from where the goods come from according to the origin rules. When delivering the goods without preferential origin status or prepared products, the supplier confirms which processing operations have been performed with the product. Supplier's declaration is needed in cases the delivered products are exported to the countries having concluded the preferential contract with EU and it is necessary to certify the origin of goods for formulation of the certificate of origin.

[65] **COMMISSION REGULATION (EEC) No. 2454/93 of 2 July 1993, revision as of 01.01.2012.** *Article 97m* (EU 1063/2010 – applied on 01.01.11) http://www.emta.ee/public/toll/CCIP2454_seisuga_01012012.pdf
[66] http://www.emta.ee/index.php?id=1015

Supplier's declaration is used in internal trade in EU and in trading with countries with whom the concluded contracts allow to apply the full cumulation. The provisions allowing full cumulation are European Economic Area (EAA), Overseas countries and territories (OCT), African, Carribean and Pacific States (ACP) and Maghreb countries. Declaration can be formulated for delivery of goods with as well as without origin status to another member state, another company of the same EU state or a country covered with the customs union contract.

Supplier's declaration is prepared on the sheet of paper with a foreseen form which is enclosed to the invoice or other accompanying document describing goods as precisely as they can be identified. Supplier's declaration must be signed by the supplier (except exceptional cases). Supplier's declaration forms are different depending on whether products with or without origin are delivered. There are also two types of declaration forms of long-term supplier.

The customs can demand that the company having formulated certificate of origin for export of goods addresses the supplier for obtaining **information certificate INF 4** for checking the information in the supplier's declaration. INF 4 is an information certificate issued by the customs for confirmation of the authenticity of the supplier declaration.

2.5.6.5. Certificate of origin – form A

Used at trade of goods with developing countries for obtaining Generalised System of Preferences - GSP[67] in international trade[68]. Covers cooperation with approximately 80 developing countries in the whole world. Procedures with certificates of origin are established with European Commission Regulation [69]. The system has been modified and is still passing modifications. Main principles for updating GSP origin rules (namely simplification, development-friendliness, and liberalization) was defined in the Commission communication published on 16th March 2005 "The **rules** of **origin** in preferential trade arrangements: Future trends".[70] Hence the aim of updating was to simplify, and where possible, also to ease rules of origin so that the states gaining benefit would actually benefit from the enabled concessions.

- Export country agencies give certificate based on exporter's application.
- Confirming agencies must inform the EU about the names, addresses, and examples of used seals of relevant agencies.
- The certificate is valid for 10 (ten) months from issue.
- Can be given also posteriorly as a copy of a replacement certificate, [71] with remark "*REPLACEMENT CERTIFICATE"*

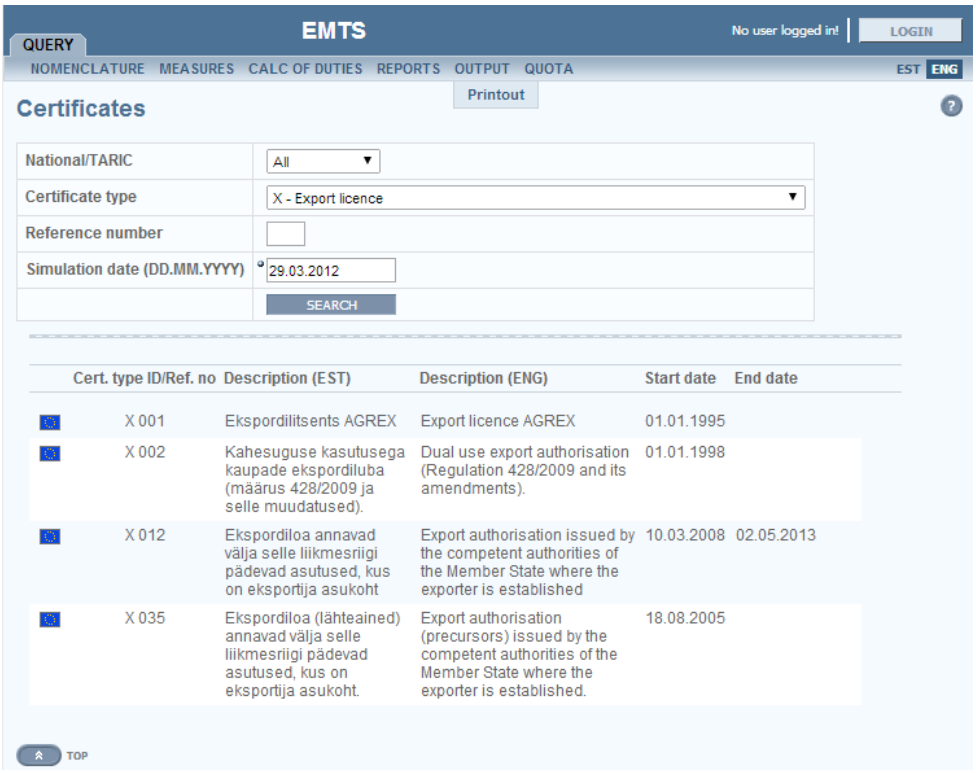
[67] http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147894.pdf
[68] http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147894.pdf
[69] COMMISSION REGUALTION (EEC) No 2454/93, 2 July 1993, (version as of 01.01.2012.) Division 7 Checking of origin EU 1063/2010 – applied on 01.01.11) http://www.emta.ee/public/toll/CCIP2454_as of_01012012.pdf
[70] Reform of GSP rules of origin http://www.emta.ee/index.php?lang=en
[71] About replacement of form A of certificate of origin GSP http://www.emta.ee/index.php?id=3375

2.5.6.6. A.TR. certificate

A.TR.-certificate is used in the trade between the Union and Turkey. The basis are formed of decision of European Community and Turkey customs cooperation committee[72]

2.5.6.7. Other certificates for filling out customs formalities

Other documents - certificates demanded by Integrated Tariff of the European Communities (TARIC) and Estonian Master Tariff System can be obtained from the homepage of Estonian Tax and Customs Board from EMTS database when selecting on desktop: Reports – certificates and then from drop-down menu necessary type of certificate. There are 25 different types of certificates. For example export licenses:



Example: A screenshot from EMTS webpage"certificates"[73]

2.5.7. Pre-shipment Inspection Certificates

Intended to be the measure for **protecting importer's interests** in the contract of sale. Necessary in such contract conditions where according to the delivery conditions, the goods risks are transferred to the importer at the country of location of the exporter. Such Incoterms delivery terms are primarily the ones starting with E, F, C. At the same time the pre-shipment inspection certificates

[72] EC-Turkey customs cooperation committee decision No 1/EC-/2006 Article 13 of 26 July 2006, establishing EC-Turkey association council decision No 1/95 detailed implementation rules (2006/646/EC), OJ 265, 26.9.2006 – amendment OJ L 267, 27.9.2006.

[73] https://vaarikas.emta.ee/emts/index.jsp

may be demanded from the bank in case the documentary payments are required. These certificates are usually drawn up by an impartial expert in free form (in case the commercial contract does not provide requirement for the form). Such certificates may be:

- **Quality Certificate.** Prepared for checking what was agreed in the contract of purchase and sale:
  - Based on buyer's requirements and rules and regulations of the country of destination
  - Usually the conformance to the standards valid in the country of destination are described
  - The form is agreed in the contract of purchase and sale.
- **Weight Certificate**. Prepared for two different reasons*:*
  - In order to observe adherence to the requirements of the infrastructure of the country of destination, or
  - Protection of buyer's interests in case the object of the contract is goods which price formation is based on the weight of the goods.

  Prepared in the country of consignment or in important transit points. The certificate is drawn up according to the form prescribed by the contract of purchase and sale or the standard form is used (e.g. FIATA SIC).
- **Lists of quantities** (list of packages) Necessary in cases when the contract object is goods which price formation is based on countable volumes of goods.
- Proceeding from the properties and peculiarities of the contract object, certificates conforming to special requirements (e.g. document certifying the level of radiation in case of ores, etc.)

In maritime and more complicated intermodal chains, such impartial experts are called **surveyors**[74] and certificates drawn up by them survey certificates.

2.6. Standard contracts of international chamber of commerce

International Chamber of Commerce has developed several model contracts[75] (the most commonly used one is **ICC Model International Sale Contract**[76]) which significantly help to facilitate the contract conclusion process. Other standard contracts have been similarly developed: The most used ones are as follows:

- Model International Distributorship Contract.[77]
- Model International Franchising Contract.[78]

[74] Surveyor means supervisor, assessor, etc.

[75] Publications of International Chamber of Commerce can be examined and ordered at: http://www.iccbooks.com/Product/CategoryInfo.aspx?cid=78

[76] The ICC Model International Sale Contract. ICC Publication No. 556

[77] The ICC Model International Distributorship Contract. ICC Publication No. 646 E

- Model Subcontract.[79]
- Model Commercial Agency Contract.[80]

International standard contract of purchase and sale consists of two parts:

- Part A – clauses A-1 to A-16 describing the contract object and the content, and
- Part B, articles 1 to 14 describing the conditions of standard contract.

They can only be used together.

The standard contract contains necessary clauses which must be reflected on a contract of purchase and sale. Recommendations issued by the International Chamber of Commerce, like delivery terms, documentary payment rules, necessary documents, arbitration, etc. and the implementations of the recommendations are used for the reflection. In brief it can be said that the partners must agree on 16 clauses describing the content of the contract and follow the example of Article 14 of part B as standard conditions of the contract.

When drawing up the contract according to the conditions of the standard contract, following circumstances must be definitely taken into account:

- Contract object must be described in a way that leaves no room for any interpretation regarding the volume as well as quality.
- Risks of the contract partners are divided fairly. This means that that the risks of the buyer concerning goods and financial risks of the seller are managed independent of the delivery terms.
- Delivery date and other time related criteria must be implementable in real life and take the environmental conditions of the realisation of the contract into account.
- Payment condition must support management of seller's financial risks based on the influence of other conditions of the contract.
- Selection of delivery conditions and payment terms influences selection of necessary documents. It is reasonable to conclude the contract in a way that involves as little red tape as possible and that the need for documents for certifying the obligations of contract parties would be optimum.
- Performance of the contract should be as simple as possible considering the existing transport systems and provided opportunities.
- Measures agreed for legal protection must be applicable in observed geographic space and legal environment and must not contradict the business practices and traditions of the contract partners.

Despite the above specified circumstances and potential complexity of taking them into account (especially in case of contracts concluded between parties from different cultural spaces), the use of standard contract facilitates much the process of conclusion of a contract. At the same time it must

[78] **ICC Model International Franchising Contract** *2nd Edition* ICC Publication No. 712E , 2011 Edition
[79] **ICC Model Subcontract** *Commission on Commercial Law and Practice* ICC Publication No. 706, 2011 Edition
[80] ICC Model Commercial Agency Contract - 2nd Edition ICC Publication No. 644, 2002 Edition

be mentioned that compiling and concluding of a contract by a certain form excludes possible mistakes (specially typical mistakes).

3. Risk management and insurance of supply chain

3.1. Essence of risks

In everyday life we tend to continuously encounter and experience events and incidents that do not make us happy. Natural catastrophes, fire, traffic accidents, armed conflicts, strikes, thefts, etc. - all such events cause us direct or indirect economical loss. Different types of threats can attack our activities and such threats we call risks.

Estonian Encyclopaedia states that risk is a possibility of occurrence of physical, material, or some other damage, involved in some operation or undertaking[81]. When planning our activities, we usually know our risks and we take risks consciously. When we make a decision, we also consider the possible risks based on information we know. At the same time this information may not be sufficient and we take unnecessary risks which may result in big losses.

Depending on the starting point and point of view, the risks can be classified and divided in several ways; for example, the risks can be divided as **speculative** and **clean** risks. In case of speculative risks, taking them may result in gaining income in case of coincidence of proper circumstances; in case of clean risks the result is always negative. The risk factors can be divided as subjective (remarkably influenced by human factor, also malicious) and objective. The latter primarily depends on properties of the risk object.

Assessment of size of risk and forecasting of possible loss is difficult and usually inaccurate, hence the presumed risks and possible losses are expressed through probability.

All economic processes including processes in logistics system are subordinated to the second law of thermodynamics, i.e. to the law of increase of entropy, and hence include risks. The probability of occurrence of risks is higher in dynamic processes where the goods move in time and space (in transport, at storing, etc.). In our practical operations we need to set the task to manage these risks, we have to do everything to minimise the risks and damages caused by them.

Form the point of view of the entrepreneurship, the most essential risks can be divided as:

1. **Risks caused by the entrepreneur's own activities**[82]:
    - Production process risks

[81] Estonian Encyclopaedia, Volume 8, Tallinn 1995 (in Estonian)

[82] The risks of that area are thoroughly described in Jaana Liigand's book "Ettevõtte riskid, äratundmine ja maandamine" ("Company risks, their recognition and management") published by Äripäeva Kirjastuse AS in 2005 (in Estonian). In case of deeper interest, please read J.S.

- Risks caused by human factor or personnel risks
- Financial risks
- Reputation risks, etc.

2. **Integration or system risks**, i.e. risks caused by activity of cooperation partners like:
   - Risks accompanied by interruption of goods flow, loss and damage of goods.
   - Risks caused by interruption/deterioration of information flow, insufficiency of information
   - Risks arising from service quality.

3. **Background risks** (also referred to as **fundamental risks**[83]):
   - Political and legislation related risks
   - Risks form natural environment
   - Social environment risks like thefts, etc.

4. **Time factor risks**

Time related risks include schedule deviations which put the performance of contractual obligations into danger. This is usually accompanied by lost profit, contractual penalties, etc.

Each risk group can in turn be divided into a whole sequence of specific risks. The risks tend to cumulate which means that if one risk is not managed, it may boost series of other risks.
For example the delay in delivery may put performance of contractual obligations into danger which in turn brings along negative changes in cash flow, damaged reputation, and also loss of competitiveness.
Hence the aim is to avoid risks which can be described as specific shortcomings. In order to do this it is necessary to create a system and organise work in a way which shall not allow to amplify the involved shortcomings in deviation of any parameter. One of the options to reduce the influence of failures is to develop alternative solution for avoiding risks, with the aim to apply such solutions in situations where the main solution towards some parameters deviates more than allowed.
In this material we mainly focus on risks in supply chains or risks faced in solving of company's logistics problems like integration, background, and time related risks. In other words we will look into the area where the entrepreneur operates in cooperation with contract partners. We will also talk about the risks of the logistic processes which involve damages to or destruction of goods. Other business risks are mentioned only in case they connect with the topic.

3.2. Risk resistance of the system

By the term **logistics system,** or just a **system,** the author means a complicated organisational structured economic system, consisting of elements (components) and parts, connected to the integral process of control of goods flow and accompanying information, cash, and service flows. The parts of the logistics system need not necessarily belong structurally into the company in

[83] Dr D.Blend, Insurance: Principles and practice. Tallinn 1996 (in Estonian)

question. As a rule, these strategies are external and process control is performed through cooperative relations.

Series of parameters characterise the risk resistance of the system like:

- **System's capability to recover** in case of a failure This is characterised by recovery time $\mathbf{T}_{recovery}$, this is the time during which the company internally or in cooperation with partners is able to recover the desired output.
- **Frequency of failures,** i.e. average time between two adjacent failures - $\mathbf{\Delta t}_{failure}$ Characterises safety of the system.
- **Recovery intensity** is reciprocal value of recovery capability-$\mu = 1/T_{recovery}$
- **Failure intensity** is reciprocal value of frequency of failures $\lambda = 1 / \Delta t_{failure}$.

Division of risks according to the loss caused by the risks and the frequency of such phenomena (failures) is characterised by the hyperbolic connection (see Figure 15):

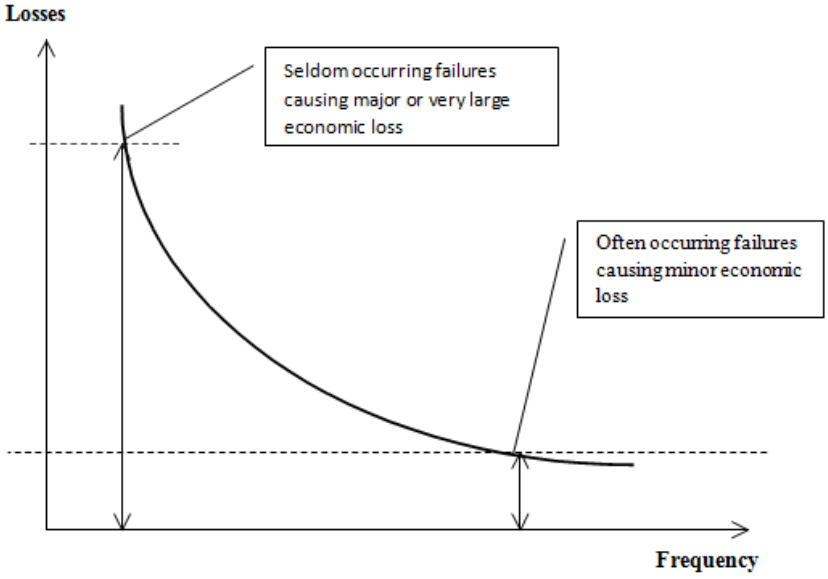


Figure 15 Division of risks

This division shows that some of the risks, despite their high frequency do not bring along essential economic losses, but they still certainly influence the quality of the system output. The system can tolerate such risks within its resources and adequately respond to them. The risks which involve remarkable or major economic losses need separate handling as the system might not have sufficient resilience when they occur. An important solution for managing risks is risk dispersion. Knowing the probable size of risks and their forecasted or to be forecasted frequency of occurrence, it is possible to plan measures for the prevention. One option is to insure the ownership and other risks which will be covered separately in this study material.

3.2.1. Reliability of the supply chain

Reliability is one of the indirect quality indicators and is based on some measurable parameters. The quality of logistic chain is determined based on whether the right goods with the right quality arrrive in a right volume and right time in a right place with as small costs as possible. This "five-right-principle" is certainly very general and in order to determine the reliability of a supply chain, we will now continue with the factors which influence reliability i.e. the three risk groups:

- Risks concerning loss (risks in material, financial, and service flow)
- Time related risks
- Information risks

Reliability is the ability of the system (logistics chain) to meet the expectations and needs of the consigner and the addressee on time and in expected scope. Hence reliability can be expressed with ratios of indicators received during performance of the process in comparison with planned indicators.

For example actual delivery time with ratio to planned time, sent volume and quality of goods to the received, etc Losses during the transportation process and worsening of quality means revealing of damage risks and is handled under the term **reliability** of the chain.

Proceeding from the above specified, the reliability of the logistics system can be formulated as **risk tolerance** of the system. Risks are actually a natural co-phenomenon of each system hence we cannot change the system risk free but we can reduce the frequency and influence of their appearance to the system and supply chain. Hence **the reliability of a system or supply chain is connected to the fact on how it is able to manage those risks.**

When to specify the three risk groups above, the most significant ones can be divided as:

a) **Risk of loss**
   - Risks accompanied by interruption of goods flow, loss and damage of goods.
   - Financial risks or interruptions in financial flow
   - Risks from service quality.

b) **Information risks**
   - Risks caused by interruption, deterioration of information flow, or insufficiency of information
   - Risks related to insufficiency of feedback.

c) **Time related risks**
   - Risks arising from time factor
   - Time related risks caused by technology.

The quality of a multi-link logistic system to contain risks can be expressed through its original, "inborn"entropy[84]:

[84] Л. Б. Миротин и В. И. Сергеев Основы логистики Москва 1999 (in Russian)

$$E_a = \sum_{i=1}^{n} (p_i \times \log p_i + \rho_i \times \log \rho_i) \text{ where } \mathbf{p + \rho = 1,}$$

n - number of links or elements in logistic system or logistic chain;

$\mathbf{p_i}$ – probability factor of the reliability of observed link or element

$\mathbf{\rho_i}$- probability of deviation or failure of the observed link or element.

The difference between initial entropy and the entropy actually formed in the system must be regarded essential:

$$\mathbf{E_b - E_{end} \rightarrow 1} \quad \text{if} \quad \mathbf{E_{end} \rightarrow 0}$$

System reliability is characterised by its risk resistance according to the parameters specified above. Material loss and drop in quality in logistic chain disturb material flow; getting rid of or minimizing these factors is the one of the most important aims for the system. In order to achieve this goal, **the logistic chain must be detectable.** There must be continuous overview of the whole system and the chain. This aspect also gives rise to the need to avoid the second essential risk group.

The majority of risks of loss (also in service and financial flows) becomes apparent because of insufficient information. Accordingly, the provision and processing of information plays a key role in logistic system. Insufficiency of information does not mean only insufficient or misleading information but also inapt timing. Time risk is revealed when the time of performance differs from the time planned. As a rule, this is understood as being late; however also an on-time performance may cause failures in the system or the chain.

As a conclusion it can be said that the reliability of the logistic system or its single part depends on how well the different risks are managed and the reliability is measurable as a ratio of planned and actual results, taking into account three (or more) influencers or risk groups.

3.2.2. Time related risks in supply chain

Time itself is not a risk factor. In this context we understand a time related risk as a situation where the activities do not fit into the planned time frame. For example when the goods do not reach the stipulated place on time and this brings along remarkable economic loss.

Which regulations are provided by the legislation and how do define transport time? Legal acts do not regulate precisely enough the transport time nor how fast the goods should move. Transport time can only be standardised in rail transport, based on SMGS agreement. All legislative regulations use the term **reasonable time.**

For example **§ 790 of the Law of the Obligations Act**. Time limit for carriage. The carrier shall deliver the goods within the agreed time limit or, in the absence of an agreement, within a time limit which can be ***reasonably expected*** of a diligent carrier having regard to the circumstances of the case (time limit) and **Article 19 of CMR Convention** Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit,

the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time **it would be reasonable** to allow a diligent carrier. Definition of the transport time and time guarantee is regulated most accurately in ***§ 6*** of GC of ELEA: The freight forwarder is responsible for ensuring that the goods arrive within a reasonable time (without a time guarantee). When assessing such reasonable time, it will be done based on expected time of arrival stated by the freight forwarder when selling the service or signing the contract. The freight forwarder is (**with a time guarantee)** liable for the goods arriving within the time if:

- it has been agreed upon in writing as a special, time guaranteed transport
- delivery at a fixed date has been submitted in writing as a condition of an offer undisputedly accepted by the freight forwarder
- delivery at a fixed date has been presented by the freight forwarder in a written quotation that was accepted by the customer.

Reasons for deviations in time parameters

1. Insufficient information about goods This is one of the most frequently occurring reasons. Large part of the time related risks are caused by insufficient or missing information. This includes intentional or unintentional information concerning mass, volume, packages or packaging units, and their handling. It occurs most often in case of import and the use of EXW, FCA, etc. delivery terms where the importer is responsible for organisation of the transport process.

2. Missing labels. This is important when goods occupy only one part of the cargo space of the vehicle (less truck loads, small consignments). The goods cannot be mixed with other goods. Each unit of goods must be identifiable during the whole transport process; it must be detectable to which consignment it belongs to and who is the recipient. Otherwise it may happen that part of the goods would not be loaded on the vehicle going to the place of destination and the goods will either stay put until they will be searched for or the goods will be mistakenly transported to a wrong address.
In addition, the goods must have labelling indicating its handling. For example, on which position the goods must be placed in transport process, how to load the goods, etc.

3. Unsuitable packaging or the packaging not fit for the type or mode of transport may cause time losses during the transport process due to additional fixing and inspection of the cargo, especially when the transport takes place under customs seal.

4. Misfilled or insufficient documentation. Causes time loss at border, customs, and demands additional time for organising documents. For example:

- differences in accompanying documents: volume of goods or specification in invoice, consignment note, and TIR manifest are different.
- Necessary certificates are missing: certificate of origin, health certificate, or certificate for transporting dangerous substances.

5. **Bad planning. The reasons may be:**
    - Miscalculation from the side of the orderer. Primarily it involves too optimistically assessed "reasonable transport time" and the order for delivery of goods is submitted too late. Each logistic company needs certain preparation time and if there is not enough time for preparations, the disturbance in movement of goods is quite probable. It is rather typical in Estonian transport service market for some orderers to search the best offer regarding price without considering the time factor and risking on account of other activity areas.
    - Miscalculations of logistic company. The situations where the logistic company leaves their homework unfinished. Occur mainly in case of single orders, e.g. miscalculation of loading times or in route selection, not taking into account the traffic restrictions, etc.

6. **Mistakes made by transport company.** For example ill-considered route selection, errors made by the driver, problems in working time management, etc.

7. **Technical reasons.** Failures of means of transport and loading technology.

8. **Climatic conditions** which do not allow to stick to the schedule.

9. **Strikes and protest actions.** Do not enable loading (e.g. strikes of port workers), do not enable movement due to blocked roads. Such cases yearly take place in France, also in Finland.

Last two reasons do not belong to the system and avoiding them or mitigating their influence is not possible by the participants of the process. In case of the first six most common reasons acting on right time can essentially diminish their frequency.

In common practice the time risks are managed primarily with reserve stock (so-called safety stock). These cover the possible deviations in the goods flow based on own as well as partners' activity. In case these deviations are caused by the logistic company or carrier, their responsibility cannot, as a rule, cover the involved economic losses. If formation of reserve stock is not possible, e.g. in case of project-based transport where each delivery is unique or in case the creation of reserve stock is not expedient for some other circumstances, it is expedient to use the just in time service and larger transportation costs should be considered and reserve time planned to the delivery schedules.

3.2.3. Risks for damage, destruction, or loss of goods

Damages to goods may take place in all stages of the logistic process and supply chain:

- Warehousing when necessary conditions are not performed.
- Packaging due to careless activities.
- The highest probability of damages still occur in the transport process.

This is also one of the reasons why the causes for occurrence of losses and activity and liability of the party being responsible for losses is reflected in legislative regulations specified in the next clause 3.2.4. We will take a quick look into these topics.

Logistics company/carrier is responsible for retention and lossless transport from reception of goods until transfer of goods to the consignee. Regrettably it may also happen in transport process that the

goods get damaged, destructed, or lost. It must be taken into account that this responsibility is always restricted and legislative regulations define the limits. First it must be distinguished whether the cooperation partner is a transport company or logistic company (freight forwarder). If it is a freight forwarder, it must be distinguished whether it acts as an agent or contractual carrier. Here the GC 2000 of ELEA and the Law of Obligations Act give the answer.

The higher limit of the limited liability of participants in transport process in case of different types of transport:

Type of transport	Legislative act	Scope of application	Limit of liability
Road transport	Law of Obligations Act CMR Convention	Domestic transport International transport	8.33 SDR /gross kg 8.33 SDR /gross kg
Water carriage	Hague-Visby rules Hamburg rules Rotterdam convention	International transport International transport International transport	2 SDR /gross kg or 666.67 SDR /delivery 2.5 SDR /gross kg or 835 SDR /delivery 3 SDR /gross kg or 875 SDR /delivery
Rail transport	Law of Obligations Act SMGS agreement CIM convention	Domestic transport International International	8.33 SDR /gross kg Does not regulate / declared value 17 SDR/kg or
Air transport	Warsaw convention	International transport	17 SDR /gross kg
Freight forwarding Liability as carrier Liability as intermediary	Law of Obligations Act ELEA GC 2000	National agreements International agreements	Similar to carrier's liability 8.33 SDR/gross kg 8.33 SDR /gross kg 50 000 SDR or per contractual order

It may be concluded from the above specified that depending on the goods and its value, the freight forwarder's and carrier's liability does not always cover the goods damage and loss risks. This is the fact which must always be kept in mind.

Most common reasons which involve losses of goods are specified below:

1. **Incomplete transport package** or package unsuitable for the type of transport. The package must conform to the peculiarities of the transport and must enable fixing of goods in the cargo space. Depending on the type of transport different forces influence the cargo during the transportation process (see below) and the package should be able to withstand such forces as well as the balancing forces expressed to the package by fixing tools without damages to the package and goods inside it. It is important also because the carrier's liability insurance or the cargo insurance do not compensate the damages to goods due to the insufficient cargo package (see the insurance chapter of this study material).

2. **Insufficient information about handling of goods** during the transportation process, including misleading or missing labelling.

3. **Damages during the loading process and as a result of errors in loading and fastening, in the transport process:**

- Direct damages by the loading mechanisms
- Errors in loading of goods
- Errors in fastening or failure to fasten the goods in the cargo space

Several forces influence the cargo during the transport process caused by the acceleration/deceleration; the limit values of the forces are expressed in transport practice through the gravitational acceleration.

Forces affecting in case of different types of transport are different[85]:

Type of transport	Towards movement	Opposite to movement	Sideways	Gravity to the bottom of the cargo space
Road transport[86]	F = 1 * g * m	F = 0.5 * g * m	F = 0.5 * g * m	F = g * m
Road transport[87]	F =0,8 * g * m	F = 0.5 * g * m	F = (0.5 +0,2) * g * m	F = g * m
Rail transport	F = 1 * g * m	F = 1 * g * m	F = 0.5 * g * m	F = g * m
- at manoeuvring works	F = 4 * g * m			
Maritime transport				
- The Baltic Sea	F = 0.3 * g * m	F = 0.3 * g * m	F = 0.5 * g * m	F = g * m
- The North Sea and the Mediterranean	F = 0.3 * g * m	F = 0.3 * g * m	F = 0.7 * g * m	F = g * m
- The North Atlantic	F = 0.4 * g * m	F = 0.4 * g * m	F = 0.8 * g * m	F = g * m

It is important that the centre of gravity of the cargo would not change its location as the result of the above specified forces and that the cargo would not slip nor overturn. Hence the cargo must be fastened so that it will avoid the above specified situations. In case the goods are not sufficiently fastened in the cargo space, this will most probably involve damages to the goods and in the worst scenario full destruction of goods.

4. Filching, thefts, defrauds, and robberies These are the risks of social environment which differ by countries and regions and depend on the economic situation of a specified country/region and efficiency of the work of the bodies of maintenance of law and order. These risks are not included in the system and can be avoided by safety of the cargo space and selection of the route.

5. False mode during the transport process Valid in case of perishables which need certain temperature, certain air humidity, etc., also special mode required for transportation of medicinal products and dangerous goods.

6. Technically non-functioning means of transport or cargo space

7. Accidents and traffic accidents

8. Natural disasters and extreme climatic conditions.

9. Exceeding of reasonable transport time (in case of goods which quality will decrease over time).

[85] Veoseohutus (Transport safety) Jüri Suursoo, Peeter Vulla, Tallinn University of Applied Sciences 2007 (in Estonian)
[86] According to IMO/ILO/UNECE Rules
[87] According to standard EN12195:2010

3.2.4. Legal background

Large part of risks are managed or partially divided between the participants by contracts; in order to avoid taking excessive risks and facilitate conclusion of contacts, the conclusion of contracts is regulated by law. Such regulation are either national or global. The main Estonian law handling the contracts is the Law of Obligations Act[88] which covers virtually all logistics area provided that the whole process starts and ends in the territory of Estonia. On the other hand GC 2000 of ELEA should be mentioned[89]; it regulates the freight forwarder's contract in international transport of goods. Both the Law of Obligations Act as well as GC of ELEA are dispositive acts, i.e. the specified conditions need not be necessarily followed when the contract partners do not require it.

International carriage contracts are regulated according to:

- Road transport - CMR Convention [90]
- On rail transport - SMGS agreement [91] i.e. Agreement on International Goods Traffic by Rail. Also CIM[92] convention can be marked, although Estonian entrepreneurs have little connection with it. At the same time Estonia has acceded GOTIF convention and one part of it is also CIM convention.
- Maritime transport - Visby Rules [93]
- Air transport – Warsaw convention[94]

All such regulations define the content of responsibility, limits, and sanctions of the contractual parties. It is important to find out one's own liabilities and possible risks involved in neglecting these liabilities.

In all these acts the consigner's tasks are:

1. Preparation of goods for transport process:
    - Packaging of goods in a suitable transport package The package must take into account the peculiarity of the type of transport, peculiarity of the route, possibilities for fastening the load, storage, and mechanised loading requirements.
    - Labelling of goods
    - Loading of goods to the cargo space of the means of transport (except in case the contract of purchase and sale prescribes otherwise, e.g. delivery term EXW[95])
2. Information delivery
    - Forwarding of accurate information about goods and proper conclusion of documents.
    - Forwarding of information about special properties and dangers of goods (dangerous goods, temperature sensitive goods).

[88] Law of Obligations Act was passed in *Riigikogu* of the Republic of Estonia on 26 September 2001.
[89] General Conditions 2000 of the Estonian Freight Forwarder's Association on homepage of ELEA at www.ELEA.ee
[90] CMR convention International contract for transport by road
[91] Soglašenije Meždunarodnogo Gruzovogo Soobštšenija or Agreement on International Goods Traffic by Rail
[92] Convention concerning International Carriage by Rail 1980 (CIM convention)
[93] International Convention for the Unification of Certain Rules of Law Relating to Bill of Lading –1924 (Hague Visby Rules)
[94] Convention concerning the Unification of Certain Rules Relating to International Carriage by Air 1929 (Warsaw convention)
[95] Delivery terms Incoterms 2010

In addition there are several legal acts handling the process as entity or its single stages, e.g. Customs Code, regulations handling transport of special cargo - ADR[96] etc. which prescribe certain liabilities for contract parties. The aim of this chapter is not to look into these conventions.

3.3. Risk management

By risk management we mean set of measures and decisions for prevention of risks and mitigating of consequences which ensure optimum division of risks between cooperation partners. The pre-requisite for risk management is a functioning logistic system which enables to perform principal tasks in the best way. **The well-functioning logistics system:**

- is integrated
- is reliable
- can recover fast
- has low frequency of errors
- can be well comprehended
- has optimum costs

To achieve this, it is expedient to:

1. do only the things you are best at
2. select cooperation partners and outsource services necessary for performing the principal task
3. analyse system weaknesses from the point of view of occurrence of risks (risk audit) and ensure consistent improvement of the system
4. development of alternatives

Risk management consists of:

1. Stage for setting a task:
   - Assessment of risks and putting them into background system (geographical, cultural, and legal)
2. Planning stage
   - Planning of measures for prevention, division, and management of risks
3. Follow up checking stage:
   - Periodical analysis of logistic system
   - Constant analysis of processes in the system
   - Finding out the causes for losses
4. Entering of corrections

The whole risk management process takes place similarly to generally known quality control principles as a constant process or so-called quality spiral.

3.3.1. Analysis

Each manufacturing entity has logistic system independent of its size or whether it is documented or not. It is recommended to carry out the analysis also when the system is not documented and operates only on the basis of a long-term experience.

[96] ADR convention

The analysis should cover:

- system structure analysis
- process analysis

3.3.1.1. System structure analysis

Structure analysis covers all elements and links of the system including internal ones and the contracting parties. It is recommended to have periodic analysis, e.g. once a year. The risk resistance depends on the risk resistance of all links of the system and is expressed as the product of the probability factors of these risk resistances.

$$p_{system} = \prod_{i=1}^{n} p_i$$

Example: In case of a system consisting of ten links, each link of which has the probability factor of 0.99 or 99% which in itself seems quite safe, the system risk resistance is:

$$\mathbf{0{,}99^{10} = 0{,}9044}$$

The probability that some of the risk factors will express itself in the form of a certain damage approaches 10 %. Such situation should not leave you indifferent. In case the risk resistance probability factor of some other link is lower, e.g. 0.95, the probability of risk resistance of the whole system will be:

$$\mathbf{0.99^9 * 0.95 = 0.8678 \text{ or } 86\text{-}87\ \%,}$$

which is not at all satisfying.

Therefore, a situation where $p_{system} \geq \prod_{i=1}^{n} p_i$

i.e. the system achieves features characteristic to a synergic system must be achieved. By that we mean strongly integrated system with well developed connections between links.

How to analyse reliability of single links.

1. If it is a **functioning system**, it is expedient to analyse the activities of previous periods, the frequency of errors, the damages involved, and solutions.

As a conclusion, it can be said that the reliability of the logistic system or a single link depends on risk management and the reliability is measurable as a ratio of planned and actual results, taking into account three (or more) influencers or risk groups. The above specified can be summarised with Figure 16, which highlights the definition of enhancement reserve of the process[97].

[97] Jorma Lehtonen, Antti Lehmusvaara Logistiikka yrityksen kilpailutekijänä

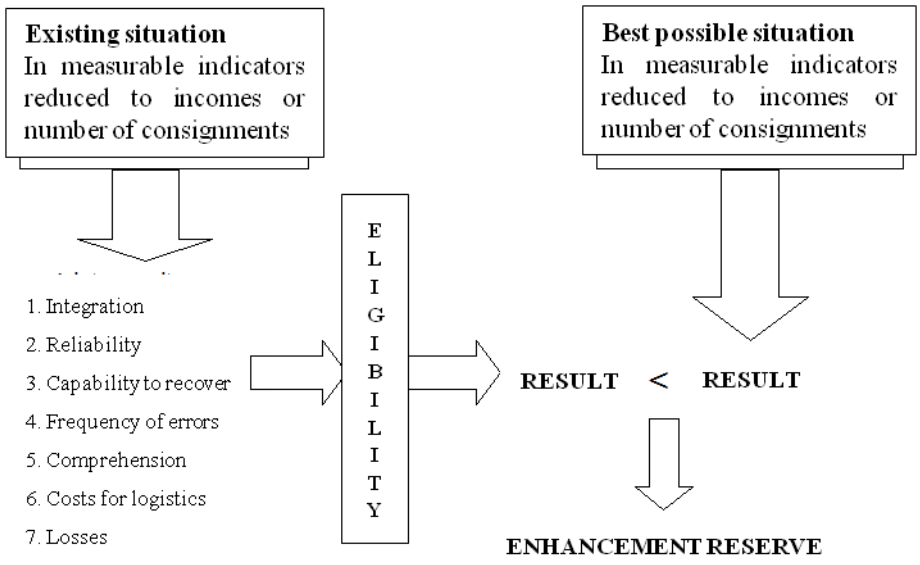


Figure 16 Enhancement reserve

The best possible situation or level for handling the logistics system is where all technical, technological, and organisational possibilities of the system are used and current situation of the system is compared as it has been formed by the observed current moment. The difference from the point of view of the system (company), logistic chain, or its link shows development potential and reserves or the enhancement reserve hidden in the system or its components.

2. **In case of a new link**, e.g. involving a new partner, the background studies will help. The background studies should find out the following:

- The knowledge and skills of the cooperation partner (specialists working there) and experiences for working in the market segment you are interested in.
- Reputation
- Ensured responsibility – carrier's, warehouse keeper's, freight forwarder's responsibility and how much of it is covered with insurance
- Is the company dealing with quality, environmental safety, and information security problems and whether this activity is certified (ISO 9001, ISO 14001 etc.).

3.3.1.2. Process analysis

Process analysis is based on a certain logistic chain at assessment of activity in time and space and related risks and failures. Course of such analysis could be similar to planning of a new chain. When planning a new supply chain, possible risks are estimated; analysis of an existing supply chain additionally includes already happened cases and seeks for ways to avoid the repetition. Process analysis is continuous and based on follow up inspection data. In all times it is best to start from the initiator of the process, the person who is responsible for functioning of the specified chain, and it must be checked if everything is done to avoid possible risks.
The following Figure 17 illustrates the most likely key points of the transportation process analysis.

The whole process is divided into four parts:

- Preparation stage
- Transport process which in turn consists of several operations and services.
- Delivery of goods
- Analysis stage.

The first one is very important. **If the first stage is thoroughly performed, it can be assumed that the process runs smoothly.** Large part of the deviations in the process is caused by insufficient preparation. There is still one additional risk, namely that the interval between planning and actual realisation should not be too long (weeks, months) since the conditions may change (e.g. traffic schemes, prices, etc.).

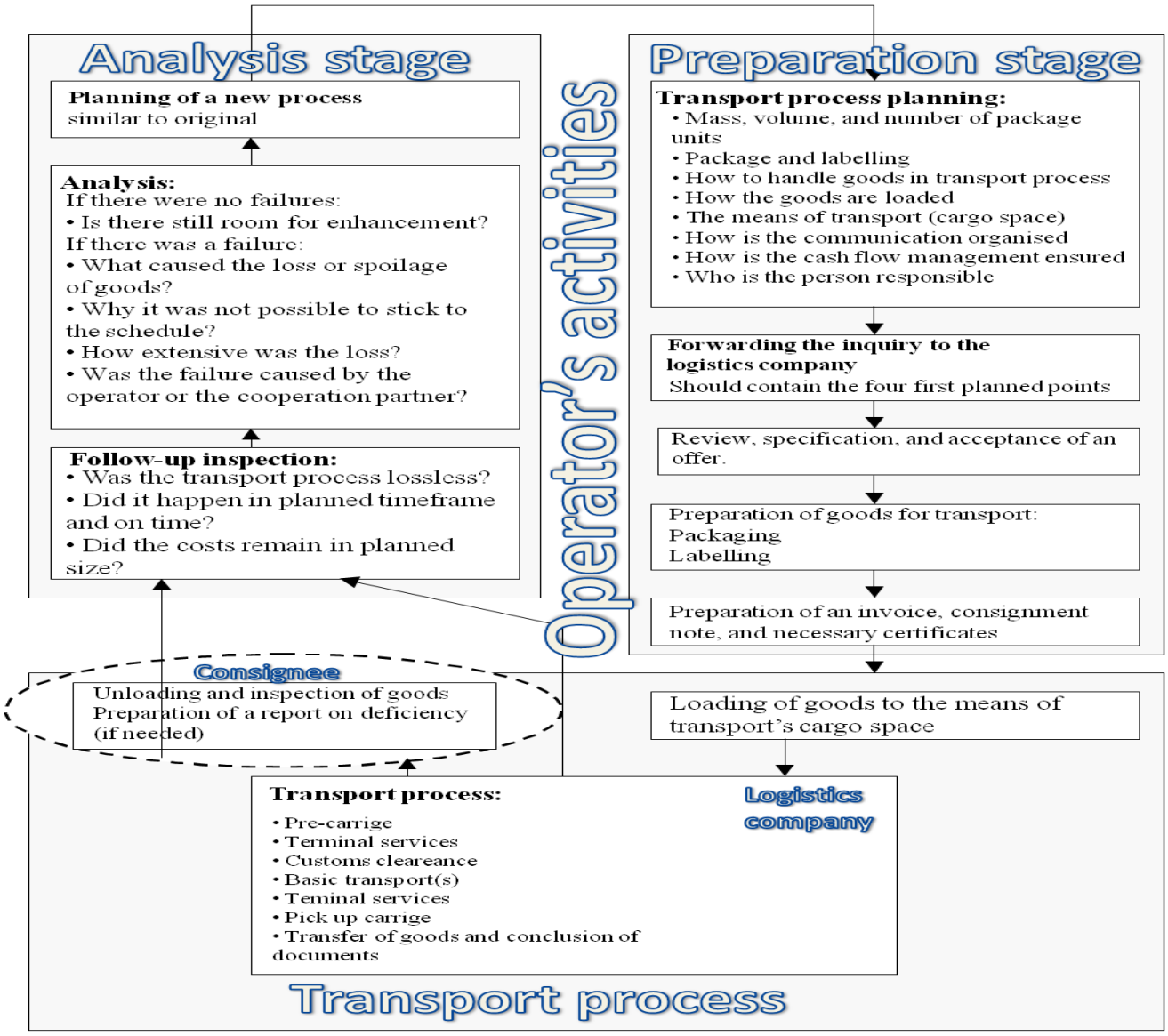


Figure 17 Process analysis

3.3.1.3. Information

The success of the second stage or transport process depends, like already mentioned, on the efficiency and preciseness of the preparation stage. At the same time probability of failure is the highest in this stage. This is a dynamic process in time and space with a possibility of many unplanned events to take place. Hence organisation of communication is especially important. In the first stage of the process, an important information for starting the process moved from the orderer to the transport organiser, and in the second stage the feedback about the course of the process must move vice versa through the transport organiser or according to the delivery terms to the person responsible for the transportation process.

One of the advantages of modern logistic systems compared to the earlier ones is that better information about the course of process can be gained and this in turn reduces risks, specially time

related risks. It is possible to intervene operatively to the process in occurrence of deviations in order to correct initial plans.
Forwarding the information is especially important when failures and deviations occur compared to originally planned activities: delays, loss of stability of the load, an accident with damages to the goods, etc. In such cases it can be said that **bad news is the most valuable news.** Forwarding such information is an obligation and first task of the transport organiser. The explanation for this is the fact following the logic of the decision process: **the earlier we receive full information, the faster we are able to accept adequate decisions for avoiding larger damages.**

The analysis must pay attention to the movement of information or find an answer to the question whether the feedback was sufficient and true. Insufficient information may influence the quality, duration, and reliability of process in its entirety and the material damage caused by it expresses itself through the time and damage risks.

3.3.1.4. Division of risks and contract

One of the options to reduce risks is to divide them with contract partners. First the capability to manage the process must be assessed - whether the chain in question can be comprehended and whether the process can be controlled in the extent of responsibility taken. In case of any doubts, it is expedient to use self-centred INCOTERM delivery terms for supply and marketing policy[98]: clauses starting with D for buying and E, F clauses for selling (see responsibility area II in Figure 18). With such behaviour you have released yourself from many supply chain risks. At the same time it is clear that you will also lose the freedom to control and optimise the cost in the chain. In case you still decide to take these costs under your control, you have to deal with management of involved risks (see responsibility area I in Figure 18). Still it is not recommended to use EXW delivery term for import as this contains unnecessary risks. This delivery term can be used only in long term contracts concluded with known partners and when also an experienced logistics company is involved.

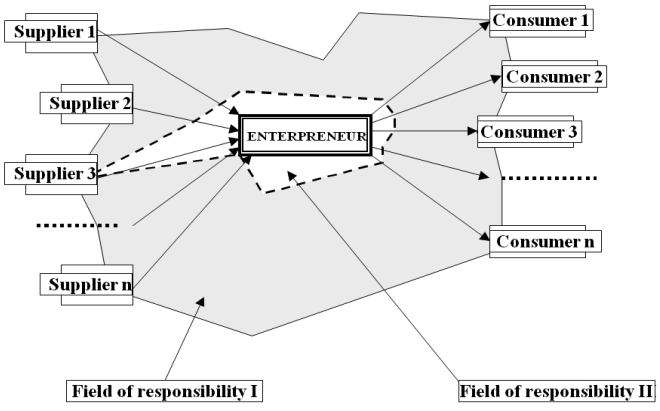


Figure 18 Area of responsibility of the system

[98] Delivery terms 2010 EMI EWT Publications Tallinn 2011 (In Estonian)

When the scope of risks is determined, organisation of transport must be agreed. In practice, there are two usual solutions:

Long-term cooperation contract with logistics company. Long-term contract usually means one year long contract extended after a year. This is not the only option, the contract period may be longer or shorter (e.g. just one project) but there are several cargos included. In a one year contract, it is agreed upon the volumes of cargo and handled volumes of goods beside the freight forwarding and transport prices. The customer is obliged to use only the specified forwarding company. The one year contract can be concluded for provision of forwarding and transport services in a specified country, providing that the forwarding company which has the best resources (experience, know how etc.) in that country organises the country-specific forwarding and transportation operations during the agreed period of time. Long term cooperation between two companies may result in versatile benefits:

- First, it enables to facilitate exchange of information
- Second, it makes the management of supply chains smoother as people being responsible for different areas get to know each other's ways and methods of action.
- Third, the issues and activity models related to practical responsibility become clearer
- Fourth, the risks caused by cooperation relations are reduced
- Fifth, the logistics system as a whole becomes easier and the system risk diminishes.

From the point of view of the person responsible for the supply chain it is expedient to bring the commercial contract into conformance with forwarding contract and this helps to diversify risks remarkably.

In case the decision is made not to be bound with a long term contract and conclude a **spot contract** for each delivery of goods, it must be followed that all actions established by law and related to the risk prevention are performed. All stages of transport chain must be handled in the course of the offer/acceptance.
Transport contracts are handled in the following chapters.

3.4. Insurance

3.4.1. Generally about insurance

Despite all precautions and attempts to manage risks, the contracts and other applied measures cannot manage all risks, including external risks and risks which cannot be foreseen. In order to avoid damages, there is only one solution in practice, one should get insurance against the risks which cannot be managed with other organisational and technical means.

3.4.1.1. History and essence of insurance

The first insurance company in contemporary sense was established in 1726. The principal area of activity of Lloyds was maritime insurance. In Estonia the first insurance operator was Russian Insurance Company who started insuring against fire accidents in St Petersburg in 1827, later gained the license also in the Baltic States and started its operations in Tallinn (then called Reval) in 1864

and in Tartu in 1865. During the time insurance has become a profitable and strategic area of activity. There were several active insurance agencies during 1918 to 1940 in Estonia (19 agencies in 1940, more than 300 cooperative insurance offices. Operation of foreign insurance agencies was not allowed. During the Soviet occupation the insurance companies were nationalised and the insurance activities were gathered under the Soviet State Insurance.

Nowadays, starting from the re-independence of Estonia, the insurance activities have been actively developed based on private capital. During the first years several insurance agencies were established which in the course of time have either merged or finished their activities.[99] Today the insurance companies operating in Estonia are economically strong and are able to provide cover for majority of common risks.

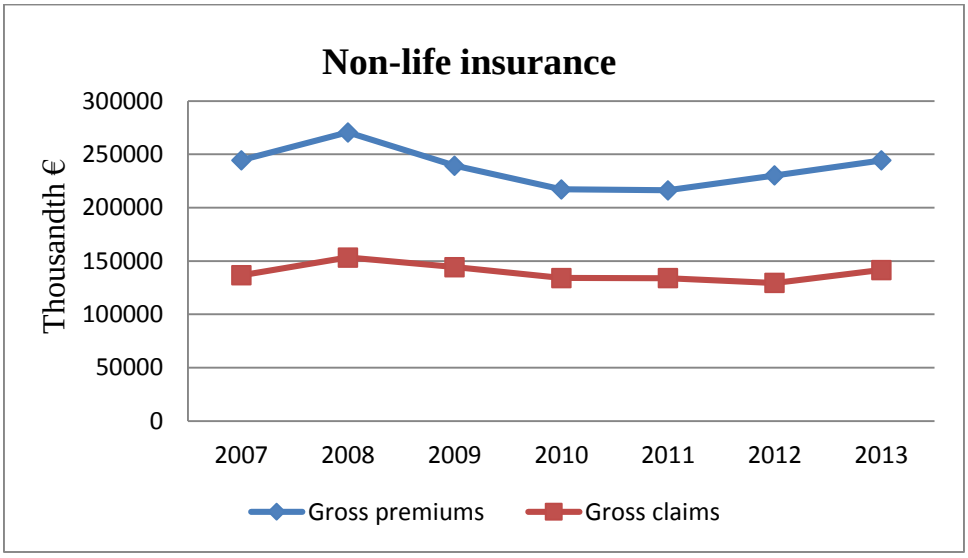


Figure 19 Development non-life insurance from 2007 to 2013[100].

The following table and diagram characterise the current situation and development of Estonian insurance market.

NON-LIFE INSURANCE TOTAL				
Year	Gross premiums	Gross claims	Difference	%
2007	244465,12	136592,23	107872,89	55,87
2008	270552,52	153239,30	117313,22	56,64
2009	239352,32	144302,28	95050,04	60,29
2010	217273,40	134043,43	83229,97	61,69
2011	216371,86	133988,18	82383,68	61,92
2012	230284,37	129494,18	100790,20	56,23
2013	244356,98	141540,42	102816,57	57,92

[99] I recommend to read Kahjukindlustuse Käsiraamat (Manual of insurance) against loss compiled by Aare-Mati Inglist, published by Äripäeva Kirjastus 2001.

[100] Data from Statistical Office of the Republic of Estonia http://pub.stat.ee/px-web.2001/Database/Majandus/14RAHANDUS/14RAHANDUS.asp

3.4.1.2. Economical and legislative aspects

Insurance services belong to the area of financial intermediation and hence have a great impact to the whole economic and social environment. From the point of view of entrepreneurs, involvement of the insurer enables to:

- Manage the risks they are not able to manage with other means
- Expand its scope of responsibility to the extent which their economic situation otherwise does not allow.

The last fact has a great importance from the macro-economic point of view. The majority of entrepreneurs are small and medium size companies whose equity is not enough to ensure responsibility in transactions in case of which the responsibility often exceeds the equity of the company in many times. Insurance activities have another macro-economic importance. In case of the insurance activities there is always a time delay between the arrival of insurance payments and payment of compensation. Therefore, the insurance companies have always free funds which can be invested and hence enliven the economy as a whole. The investment possibilities of insurance agencies are, of course, strictly limited and they must not cause any problems for the policy holders.

Legislatively in Estonia the insurance contracts are regulated by

- Part 4 of the Law of Obligations Act: **Insurance Contract** [101] including Chapter 23: **General part** handles general aspects related to insurance contracts in 7 divisions (incl. conclusion of insurance contract: 2. Division 2 **Entry into Contract** §§ 428-442), and different chapters of that part deal with different areas of insurance. Our area of interest or non-life insurance (property insurance) – Chapter 24 with Division 2 §§ 505 – 509 Goods in Transit Insurance and Division 3 Liability Insurance §§ 510 – 525.

- Activity of insurer is regulated by the **Insurance Activities Act102** passed on 06.06.2000, entry into force on 01.08.2000.

- These acts are accompanied by series of specific legislative acts handling different facets like **Motor Third Party Liability Insurance Act** [103] etc.

Parties of insurance contract

[101] **Valid revision of the Law of the Obligations Act** RT I, 08.07.2011, 21
https://www.riigiteataja.ee/en/eli/506112013011/consolide
102 Insurance Activities Act 08.12.2004 RT I 2004, 90, 616 entry into force on 01.01.2005

Last revision RT I, 02.11.2011, 6 https://www.riigiteataja.ee/akt/102112011006

[103] Motor Third Party Liability Insurance Act [RT I 2007, 55, 368 – entry into force 02.11.2007] Passed on 10.04.2001 RT I 2001, 43, 238 entry into force 01.06.2001. https://www.riigiteataja.ee/akt/131122010011

Insurer. Insurance activities influence the whole economic activities and social sphere hence the conditions prescribed for the insurer are better regulated and controllable. The insurer must have an activity license issued by Estonian Financial Inspectorate and it must strictly act by the procedure established in the Insurance Activities Act. The insurer is called an insurance agency. Series of requirements are presented to the insurer according to the above specified law which can be divided as follows:

1. **Special requirements to the insurer's articles of association** incl. the fact that only a public limited company who deals only with provision of insurance services and whose articles of association must contain the following data beside the provisions of the commercial code can act as an insurer in Estonia:
   - List of technical provisions to be performed.
   - The competence of management board and council in approval of conditions of insurance contracts, procedure of formation of technical provisions, and formation of internal audit and procedure of reporting.
2. **Requirements for management and personnel, including**
   - Special requirements to the education, competence, and reputation of the council members of the insurer
   - Requirements for specialists. An insurer must employ based on an employment contract an actuary with academic higher education and sufficient knowledge and professional skills for working on a relevant specialty The actuary must assess the correctness and sufficiency of the insurance tariffs, calculate the size of technical provisions based on actuary methods, approve their correctness and conformance to the requirements of the law and conformance of own funds to the standard of own funds (solvency margin), calculate the surrender values to the insurance contracts, and perform actuary profit analysis by single contracts and similar type contracts. Responsible actuary must assess the influence of concluded reinsurance contract or the ones to be concluded, on technical provision, payment of sums insured, surrender values, and actuary profit by single contract and similar type contracts.
   - Requirements of confidentiality. Members of the management board of the legal person dealing with insurance, council members, employees and persons acting by their authorisation or order, also officials and persons performing supervision and receiving relevant information are obliged to keep confidential all information that has become known to them and which concerns the economic and health status, personal data, and business or other professional secrets during working and operating as well as after that for an unspecified time, if not otherwise prescribed by the law.
3. **Requirements for shares and share capital, etc.**

Policyholder. Policyholder is a legal or natural person who concludes an insurance contract with insurer and who is obliged to pay the insurance premium. A representative concludes the insurance contract on behalf of a legal person. The insurance contract is expanded to all persons working in

subordination of the policyholder based on the contract of employment if not otherwise agreed in the insurance contract.

3.4.2. Main definitions

In order to negotiate with the insurance agencies, obtain an overview of insurance conditions, examine the insurance contracts, and also understand the contracts, the main terms and definitions must be made clear. Below are presented the most important ones.

1. **Insurance object.** Insurance object can be property, responsibility of the policyholder, work capacity, profit not gained, etc. From the point of view of logistic systems the responsibility of system links, their property, and transport form an essential insurance object.
2. **Insurance risks.** Insurance risks are risks which may have impact on the insurance object or cause significant proprietary loss to the third parties.
3. **Insurance contract.** Insurance contract is a written agreement concluded between the insurer and the policyholder according to which the policyholder is obliged to pay the insurance premium determined in the insurance contract to the insurer and the insurer is obliged to pay the insurance compensation in case of occurrence of an insured event. Process of conclusion of an insurance contract is handled in the subsequent clause 3.7.
4. **Insurance policy.** Insurance policy confirms conclusion of an insurance contract. The insurance policy includes fixed and integral parts of the insurance contract:
   - Terms and conditions of insurance
   - Special conditions, if fixed
   - Insurance offer
   - Request for insurance
   - Other annexes, if needed.
5. **Additional contract.** Additional contract is a written agreement concluded between the insurance contract parties for **supplementing, correcting, or amending** of the insurance contract. It is necessary in case additional risks are added or some risks fall off the list during the contract period. Additional contracts become valid at an agreed time and will be valid until the end of the insurance period if not agreed otherwise. A supplementary insurance premium shall be calculated for an additional contract for the time interval starting from the date of its conclusion until the end of the insurance period.
6. **Insurance period.** Insurance period is a time interval starting and ending at the precise term indicated in the insurance contract. When concluding the insurance contract the parties may, in addition to insurance period, separately agree upon the extended period for retroactive effect and/or notification about the insured event.
7. **Insurance contract period.** Insurance contract period determines the territorial scope and jurisdiction, e.g. in the territory of the Republic of Estonia, within the borders of the European Union, etc.
8. **Multiple insurance.** In case of multiple insurance the insurance object has multiple or duplicate insurances by many insurance agencies. In case of multiple insurance, the insurer usually calculates the insurance compensation which proportionally forms the same part from the sum of the claim of how large is his part from the total sum of the insurance sum of his

single insurance contracts. In order to eliminate the multiple insurance, the parties of the insurance contract may demand termination of the insurance contract during the insurance period.

9. **Compensation limit.** Compensation limit of all claims is an amount of money which is the limit for all payable insurance compensation and legal protection costs. Compensation limit of single claims is an amount of money which is the limit of payable insurance compensation and legal protection costs towards the insured events which arise out of a single event. In common practice the limit of compensation towards the claims following the events taken place during the retroactive effect the limit of the compensation of the insurance contract valid at the time of occurrence of the event. Compensation limits are fixed in the insurance contract. Compensation limit is reduced by the amounts of insurance compensation and/or compensated legal protection costs paid during the same insurance period. Usually it is possible to conclude an additional contract for recovering the limit of the compensation.
10. **Liability of policyholder** is a sum fixed in the insurance contract which in case of arrival of the insured event remains to be incurred by the policyholder. In case of insurance events following a single event, the excess is calculated only in case of the first payable insurance compensation and/or legal protection costs. Size of excess is important from the standpoint of the policyholder because its determination must consider the ability of the insurer to bear the ownership. Hence the reserves of the company, equity, and possible frequency of risks must be considered. See also figure 20.

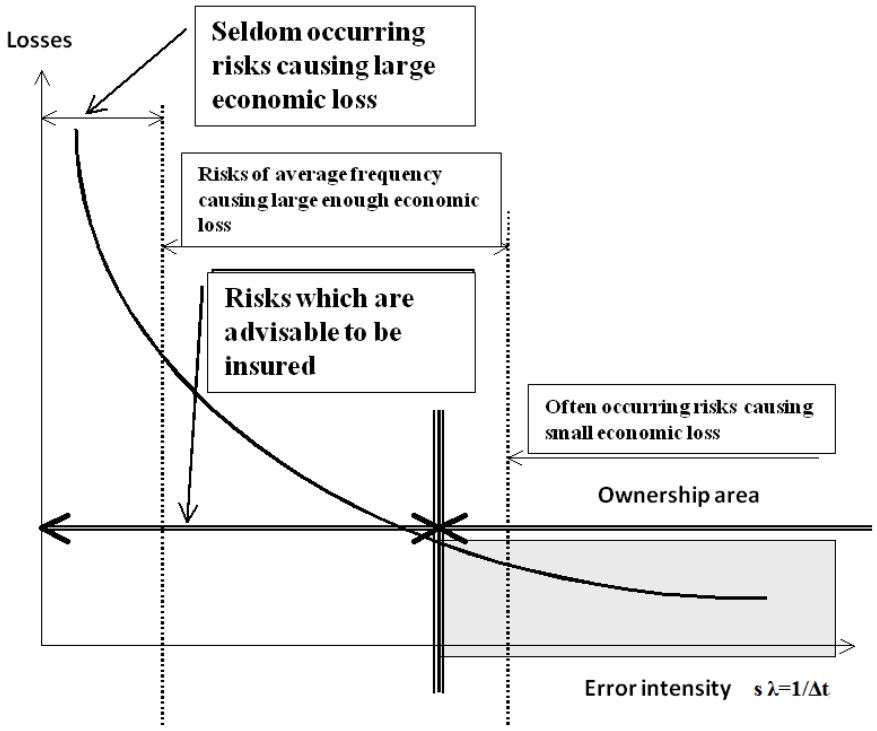


Figure 20 Liability of policyholder

11. **Legal protection costs** include amount spent on legal assistance, expert assessment, and court case management. Legal protection costs are compensated by the insurer in case it is necessary

for proving of the lack of the insurer's civil liability. As a rule, legal protection costs previously coordinated with an insurer belong to compensation.

12. **Insurance premium.** Insurance premium is the monetary payment for the insurance period. In practice the parties of the insurance contract may allocate the insurance premium for periodic payments. Insurance premium is paid for an agreed term.
13. **Insured event.** Insured event is either damage caused to the insured object, its partial or full destruction, loss or a grounded claim of third persons against the policyholder (in case of liability contract). In case of the insured event, either one or more insurance risks have influenced the insured object, involving proprietary or personal loss. Depending on the type of insurance, the insured event is always defined specifically in the insurance conditions / contract.
14. **Exclusions. Exclusions mean exceptions listed in insurance conditions** occurrence of which in case of appearance of insurance risks is not deemed as insurance event. List of exclusions is important regarding the insurance conditions and examining the exclusions is important before conclusion of a contract. Exclusions set certain restrictions to receiving of insurance compensation in cases caused by an intentional activity of the policyholder and other circumstances which do not fit to the damages caused to the insured object. Exclusions form one possibility for excluding the insurance fraud. In case of each insurance type, the list of exclusions is different and it is based on the peculiarity of an insured object and risks influencing it. The common feature is that an intentional activity of the policyholder which caused the damage and risks managed by other (specific) insurance contracts are always excluded.
15. **Insurance compensation.** Insurance compensation is a sum paid to the policyholder or a person defined by him for compensation of damage caused to insured property or claim filed against him and proved. Insurance compensation may also be recovery or replacement of assets. The deductible is subtracted from the insurance compensation.
16. **Over- and under-insurance** Over-insurance is when the value of the insurance object i.e. insured property is smaller than the sum insured at the moment of occurrence of the insured event. Only the actual value is compensated in case of over-insurance. Under-insurance is an opposite situation where the sum insured is smaller than the actual value of the insured property at the moment of occurrence of the insured event. In case of the under-insurance the sum insured is diminished proportionally by a ratio of the property's insured sum and the insurance value. In both cases the compensation is subtracted by the sum of deductible.
17. **Reinsurance and co-insurance.** Each insurance agency should be able to bear taken risks. In case the insurance risk exceeds the possibilities of the insurance agency, there are two options - to use re-insurance or co-insurance. The insurance agencies often use the reinsurance for diversifying risks in case of sum insured exceeding the limits set with internal work organisation. **In case of co-insurance** several insurance agencies conclude contracts (take risks) for protection of one insurance object. For example in case of ships, aircrafts or industrial sites with high danger. **Reinsurance** is an insurance contract concluded by an insurance agency for protecting itself against the damages which may be caused by contracts concluded with the policyholder. The customers of the insurance agency gain feeling of safety from it, concluding that the insurer is able to perform its liabilities.

3.4.3. Insurance types

The insurance activities are divided into the following main types:

- Non-life insurance
- Life insurance
- reinsurance
- Insurance mediation

In this study material mainly the non-life insurance is handled.

Main types of non-life insurance are in turn:

1. **Liability insurance** where own liability is insured against possible losses which might be caused to third persons with own activities of economic activities. Liability insurance in turn in divided into:
   - Civil liability insurance
   - Suretyship insurance
   - Motor vehicle liability insurance or carrier's liability
   - Aircraft liability insurance
   - Ship liability insurance
   - Motor third party liability insurance

2. **Property damage insurance** where specific property is an insurance object, e.g.:
   - Land vehicle transport insurance (also casco)
   - Railway rolling stock insurance
   - Aircraft insurance
   - Building and facility insurance against fire and natural forces
   - Insurance of other assets
   - Goods in transit insurance or insurance of transported goods.

3. **Personal injury insurance:**
   - Accident insurance
   - Travel insurance (insurance of drivers of carriage of goods).

4. **Financial risk insurance:**
   - Credit insurance
   - Financial loss insurance

In case of all insurance types it is important to determine the risks of insurance object and insurance risks and conditions excluding the insurance case (exclusions). Next we will look into the types of insurance which are important from the viewpoint of the logistic system based on these criteria.

3.5. Liability insurance

In daily work we are constantly in legal relations with the customers and cooperation partners. Cases where the use of product or service brings along claims cannot be excluded. In case of occurrence of loss the person's legal right is to demand compensation of loss. Liability insurance covers the personal injuries and proprietary loss to third persons within the framework of liability based on the laws i.e. liability insurance object is defined by the law. Liability insurance does not compensate an additional contractual liability nor losses occurring to oneself.
Civil liability insurance can be concluded by legal as well as natural persons. Conclusion of the liability insurance is obligatory for notaries, auditors, bailiffs, patent attorneys, and lawyers. In common practice the civil liability insurance covers person's professional or vocational activity, general or daily activity liability compensating the proprietary loss and personal injury for third persons which the policyholder has caused in its professional or vocational activities and general or daily activities, and liability for compensation of which lies on the policyholder according to the law.

Main sub-types of the liability insurance are:

- **General civil liability insurance** – loss caused by the person or company to the third persons (e.g. not sanding the roads in winter causing the third person to slip and break his leg.)
- **Professional civil liability insurance** – loss caused by a person or company during provision of professional or vocational service to the third persons (e.g. inaccurate design works, wrong medical treatment, loss caused by illegal activity of the notary or bailiff, etc.).
- **Product liability insurance –** loss caused to the third persons by consuming/using poor quality products or defective product (e.g. poorly installed roof will permeate water and the water will damage the furnishing of the building).

3.5.1. Civil liability insurance

Civil liability insurance in turn is divided into several types of insurance including general civil liability insurance, professional civil liability and product quality liability. Insurance object and insurance risks are determined based on the economic activities of the company.

Insured event in that case is the claim filed against the policyholder by the third parties for compensation of personal injury and proprietary loss which has occurred as the consequence of policyholder's activity or inactivity and conforms to the conditions defined in the insurance contract whereas it can be considered to be an insured event only when loss is caused by the activity of the insurer within the framework defined in the insurance contract or by administering the territory or building in its ownership or possession or by the produced, processed, changed or corrected items, production, or package directed to the market by the policyholder or insufficiencies or errors in written product manual. The event having caused the loss must have been occurred during the

insurance period or retroactive effect period of the insurance contract. There must be cause and effect relationship between the act of the policyholder and the occurred loss and the policyholder must be guilty of causing loss and the claim and the size of the loss being the basis for the claim must be proven.

Comparison of risks and exclusions is important for conclusion of civil liability insurance contract to be sure that the exclusions do not make the insurance contract senseless. The exclusions can usually be divided according to their influence into:

- General exclusions which limit the economic activities of the entrepreneur
- The exclusions excluding the special conditions of the economic environment
- The exclusions excluding intentional activity and insurance fraud of the entrepreneur
- The exclusions excluding following the handling of dangerous goods
- Risks manageable with other types of insurance.

For example the general civil insurance exclusions are divided as:

General:

- Requirements based on indirect loss and/or not gained profit
- Requirements not based on the insured area of activity of the policyholder/insured person, incl. additional liabilities taken with the contract (incl. written and otherwise given guarantees, fines for delay, etc.)
- The policyholder has not paid the insurance premium or its periodic premium on time.

Following the extreme changes of the economic environment:

- Requirements caused by war, act of foreign enemy, revolution, strike, riots, state of war, confiscation, nationalisation, crime, terrorism.
- Requirements caused by force majeure.

Exclusions caused by the ownership relations and intentional activities of the policyholder, e.g.

- Requirements directly caused by the intent, dishonesty, intentional crime and activities performed under the influence of alcohol or drugs or in state of intoxication.
- Requirements based on event having caused the loss of which the policyholder was aware before conclusion of the contract and of which he or she had not informed the insurer before conclusion of the contract.
- Requirements caused by the policyholder by violation of legislation regulating the use of patent, copyright, or trademark
- Mutual requirements between people covered with the same insurance contract.
- Requirements for the benefit or against any person:
  - What/who the insurer directly or indirectly owns, controls
  - Which/who owns, controls policyholder
  - To which/who the policyholder is a shareholder or a partner

Requirements following handling of dangerous substances and medicinal products which are directly or indirectly caused by:

- Radioactive, radiated, toxic or explosive
- property of any substance
- Any kind of contamination or pollution
- Legal penalties determined to the policyholder or claimant, or other penalties added to the occurred loss
- Chemical or biological substances not used for peaceful goals.

Risks covered with other types of insurance which are not compensated, like:

- Requirements of loss occurred to the assets, documents or any other data carriers (incl. based on computing technology) in the administration, possession, storage, processing, repair, etc. of the policyholder.
- Belonging or would belong for compensation according to the Motor Third Party Liability Insurance Act or other insurance contract (carrier's liability – CMR, TIR liability, cargo insurance – marine).
- Caused by the water or aircraft belonging to, leased by, borrowed by, rented and/or driven by the policyholder
- Caused by the loading works of any vehicle or trailer
- Connected to underground or underwater works
- Connected to ship building and repair
- Connected to use of trains, trams, and funicular
- Caused by the production of the production lines, electronic treatment apparatus, and tobacco products manufactured by the policyholder
- Connected to price change, product replacement, renewal, or elimination from the market process or reduction of the product value.
- Caused by the products manufactured, delivered and installed for automotive industry, aviation or space technology by the policyholder
- Caused by provision of professional service (consultations, advice, measuring, calculations, design works, planning, medical) by the policyholder or by activity of the policyholder as a manager or official of economic unit
- Caused by loss belonging to compensation by the pension or other social security procedure
- Directly or indirectly caused by the hardware and/or software and/or processors
- Caused by losses due to participation in training, competitions, attractions

3.5.2. Carrier liability insurance

In case of a carrier liability the liability can always be described based on legislative acts depending on the type of transport. In case of all types of transport it is the limited liability of carrier in case of damage to goods, destruction as well as delay in delivery. In case of all types of transport the carrier

liability is insured according to adaptation of liabilities defined in legislative acts and provisions excluding liability. The limits of carrier liability are described in clause 3.2.3 of this study material.

Due to the above specified, the insurance object as well as risks can be precisely described and making amendment in them at conclusion of contracts is not expedient. Professional and responsible carrier insures its liability to the full extent depending on the maximum loading capacity of the means of transport at its disposal.

Next we will examine more thoroughly the insurance conditions of the road carrier as this is one of the most common type of non-life insurance.

Insurance object. The insurance object is policyholder's civil liability as a carrier of goods in relation to:

- Paid contract of carriage of goods concluded with customers according to the valid revision of CMR (Convention on the Contract for the International Carriage of Goods by Road) convention and in Estonia according to the Law of Obligations Act.
- Payment of customs duties and levies to Association of Estonian International Road Carriers (ERAA) according to Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975.

The latter handles carrier's liability towards customs bodies and is necessary only for the carrier using TIR Carnet. It can be left out as insurance object in transport in Estonia and soon also within the borders of the European Union.

Insurance risks. According to the road carrier's liability insurance contract, usually the insurance against the following risks is concluded:

- Destruction or damage of goods if the goods are transported in conformance to CMR convention, Law of Obligations Act, or some other contracts agreed with the insurer.
- Financial claims against the policyholder caused by:
  - Delay in delivery of goods in case it is violation of dates of delivery of goods prescribed based on CMR and other legal acts, contracts and/or rules agreed between the transport contract parties.
  - Release of cargo in case it violates the order of the responsible person not to release goods.
  - In case of destruction or loss of goods, claims present for compensation of direct costs related to transport process.
  - Claims legally presented for compensation of customs duties or levies.
  - Liability toward third persons in case of loss caused by the goods if the liability occurs in connection with destruction or damage of property of third persons.
- Reasonable and expedient costs:
  - In order to avoid insured event or reduce the loss caused by the insured event.
  - In order to investigate circumstances of the insured event and protect the policyholder's interests related to insured event in the court and/or arbitration if the policyholder is the person responsible.

- Costs related to customs duties, levies, and other taxes which
- Can be determined to the policyholder according to the customs laws and regulations of countries, in connection with performance of customs operations established with TIR convention or violation of transport procedure of goods when TIR carnet is used.
- Reasonable and expedient for avoiding or reducing of loss when the necessary measures specified in the rules of use of TIR carnet.
- Made for investigation of circumstances of the insured event and protection of interests of the policyholder in the court and/or arbitration when the person responsible is the policyholder according to the TIR convention.

Exclusions Insurance agencies may phrase and rank exclusions differently. Generally the exclusions can be divided into following groups and it is recommended to specify exclusions when concluding the contract. The following is an example of one of the options for grouping the exclusions in order to facilitate the process of taking the exclusions into consideration and understanding them better.

General exclusions which limit the economic activities of the entrepreneur and remain outside the economic activities of the entrepreneur or form an object for other types of insurance. Damages are not compensated based on the insurance contract when they are not caused by the insured event or which occur in connection with:

- Transport of people
- Carriages based on international mail conventions
- Carriage of dead persons
- Moving of apartment furnishing
- Towing of vehicles.

Exclusions caused by the ownership relations and intentional activities of the policyholder, e.g.

- Unlawful activity of the policyholder
- Insolvency or lack of funds of owners of means of transport or freight forwarders or operators
- Transport related to contraband, undeclared goods, or illegal trade.
- Transport of goods with refrigerated trailer or other refrigeration equipment in case the refrigerating equipment not corresponding technically to the cargo safety or goods preservation requirements is used consciously.
- Not following the requirements of necessary temperature mode if it is the negligence of the policyholder
- Impracticability of means of transport (also container and van) for transport or safe carriage of goods in case the policyholder was aware of it at the moment of loading goods.
- Intentional activity or severe negligence of the policyholder's employees, violation of carriage or storage conditions of goods, violation of procedure of carriage of goods when TIR carnet is used according to the TIR convention. Severe negligence means actions or failure to act upon performance of work obligations by the policyholder or equivalent persons as the result of which they could foresee or could have foreseen the claims of the

owner of goods, customs body or the third person, but they light-mindedly hoped that there will be no such consequences.

- Activity or failure to act of the policyholder or equivalent persons in state of intoxication or under influence of other narcotic drugs or toxic substances.
- Driving in a territory closed for traffic.
- Requirements following the circumstances of which the policyholder or equivalent persons were or should have been aware of before conclusion of an insurance contract.
- Mutual requirements between people covered with the same insurance contract.
- Requirements presented based on Articles 23.6 and 26.1 of the CMR convention (taking high liability).
- Using of or working with computer, computer system, programme, or any electronic system if such loss, damage, cost, or liability was caused directly or indirectly by change of the date.

Some exclusions following the character of goods and packages:

- ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the goods
- Inherent vice, failure or defect of cargo
- Insufficient or improper packaging or preparation for transport. Packaging also means loading of goods to the container or transport van in case it was performed before beginning of the insurance contract period or by the dispatcher of goods.
- Deficit of goods in case of externally proper package or seals of the consigner.
- Transport of the following valuable goods:
  - Blanks of precious metals and products made from them.
  - Precious stones and jewellery
  - Banknotes, coins, bonds, means of payment, securities.
  - Art pieces
- Live animals
- Delay also in case the delay was caused by the insurance risk (excluding costs compensated according to the clause included in the contract conditions).

Exclusions following the transportation environment and extreme changes in the economic environment:

- Use of weapon if nuclear fission, fusion, or other reactive or radioactive force or substance is used
- Civil war, war, revolution, riot, rebellion, civil conflict arising from it or any other hostile act by a valid power or against it
- Conquering, occupation, arresting, besieging, detention, or their attempt or consequences
- Abandoning of mines, torpedoes, bombs, or other weapons of war
- Activities of strikers, workers in lockout or persons participating in riots of workers in misdemeanour or civil unrests.

- Activity of terrorists or other persons acting by political motives.
- As the consequence of force majeure not depending of the intent of parties or cannot be controlled by them.

General limit of compensation and insurance risk limit of compensation

General limit of compensation is an amount of money being the upper limit of insurance compensation towards all insurance risks of an insurance object during the validity period of the insurance contract. Limit of compensation of the insurance risk is the upper limit of indemnities determined in the insurance contract for one insurance risks whereas the limit of compensation of destruction or damage of goods on carriage of goods on conditions of CMR convention are determined according to Article 23 of the CMR Convention (carriage of goods without indicating its cost on the delivery note). Insurance compensation cannot exceed the amount of cost of goods and the carriage charge. On special agreement of parties of the insurance contract the limit of compensation of destruction or damage of goods is determined according to Article 24 of the CMR Convention (carriage of goods with cost indicated in the delivery note). Limit of compensation of claims per use of one TIR carnet by the policyholder is € 60,000 (sixty thousand euros). In case of some countries it is USD 50,000.

3.5.3. Freight forwarder's liability insurance

Liability insurance is a statutory obligation for the members of the Estonian Freight Forwarder's Association. With such activity the freight forwarders give a security that their liability is guaranteed and the risks of other participants in the process are managed within the limits determined by laws.

Insurance object. Insurance object is policyholder's civil liability as the freight forwarder towards the paid freight forwarding contracts concluded with customers or transactions according to the:

- Valid revision of general conditions of ELEA
- Law of Obligations Act
- Standard conditions (1992) of FBL (bill of lading of multimodal transport).

Insurance risks somewhat differ from the ones described with carrier's liability insurance and according to the insurance contract, the policyholder is insured against the following risks:

- Destroyed or damaged goods when the goods are forwarded in accordance with valid version of General Conditions of ELEA, Law of Obligations Act or standard conditions of FBL.
- Financial claims against the policyholder caused by:
  - - Delay in delivery of goods in case it is violation of dates of delivery of goods prescribed based on legal acts, contracts and/or rules agreed by ELEA, FBL and other forwarding contracts of transaction parties.
  - Release of cargo in case it violates the order of the person with right of command not to release goods.

- In case of destroyed or lost goods, claims made for compensation of direct costs related to transport process.
- Claims legally made for compensation of customs duties or levies.
- Additional costs related to re-dispatch to the correct address in case the goods were sent to the wrong address due to fault of policyholder's employees, except in case the goods were released to the wrong consignee due to fault or negligence of policyholder's employee.
- Additional costs related to cost of transport by specific type of transport for transport of goods from a correct place of delivery to the prescribed destination if wrong goods were sent to the prescribed destination.
- Loss or false use of documents given to the disposal of the freight forwarder.

- Liability toward the third persons in case of loss caused by the goods if the liability occurs in relation to destruction or damage of property of third persons.
- Reasonable and expedient costs:
  - In order to avoid insured event or reduce the loss caused by the insured event.
  - In order to investigate situation of the insured event and protect the policyholder's interests related to insured event in the court and/or arbitration when the policyholder is person responsible.

Exclusions in case of freight forwarder's liability is similar to the above specified carrier liability insurance and may differ by nuances in case of different insurers but not in essence.

General limit of compensation and insurance risk limit of compensation General limit of compensation at insurance freight forwarder's liability is agreed upon by the insurer and the policyholder and is the sum which in case of insurance object towards all described insurance risks is the upper limit of insurance compensation. This cannot be smaller than limit of compensation of the highest insurance risk. General limit of compensation can be increased with an additional contract. Limit of compensation of the insurance risk is separately determined limit of insurance compensation for one insurance risk whereas the limit of compensation of destroyed or damaged goods at carriage of goods based on General conditions of ELEA 2000 are determined according to the provisions of the valid version of general conditions of ELEA (freight forwarder's liability as a carrier (Sections 17-23) or freight forwarder's liability as mediator (sections 25-26)). Insurance compensation cannot exceed the amount of cost of goods and the carriage charge.

3.5.4. Motor third party liability insurance

Motor third party liability insurance is a special type of civil liability insurance which compensates the proprietary loss caused by the offender to the casualty in a traffic accident. This is a mandatory type of insurance regulated by the Motor Third Party Liability Insurance Act[104]. This law expands to

[104] Motor Third Party Liability Insurance Act [RT I 2007, 55, 368 – entry into force 02.11.2007] Passed on 10.04.2001 RT I 2001, 43, 238 entry into force 01.06.2001. https://www.riigiteataja.ee/akt/131122010011

all owners of motor vehicles participating in the road traffic. Participation in road traffic without a valid motor third party liability insurance policy is punished by administrative procedure. In Estonia owning of a policy is controllable electronically and should not be carried along. To the road transport companies this type of insurance belongs to the insurance set. Entrepreneurs who act as cross-border carriers must conclude international motor third party liability insurance contract or green card contract (Green Card GC).

Green card is a policy form of a common contract or motor insurance valid in a foreign country. Only the insurer of a valid ordinary contract can issue the green card to the policyholder. The owner of an ordinary contract need not pay any additional insurance premium or other fees for issuing a green card. Green card can also be issued for a vehicle registered in Estonia but not having a contract. The green card is valid during the period and in the countries indicated in the policy. Green card can be issued for the vehicle registered in Estonia. In this case the contract is valid in the countries who have a relevant contract with the Estonian Guarantee Fund (former Estonian Traffic Insurance Fund). The contract is valid in a foreign country on conditions following the legislation of that country and contracts concluded between the members of the Council of the Bureaux. National office of the motor third party liability insurance in Estonia is the Guarantee Fund and it is the member of the Council Bureaux. Member of Estonian Guarantee Fund in accordance with the statutes and decisions of the Council of Bureaux has the right to issue the green card.

Insured event of the motor third party liability insurance i.e. the traffic damage means causing damage with the vehicle belonging to insurance if the following conditions occur at the same time:

- Loss is caused in the road traffic with the vehicle belonging to insurance
- Loss is caused as the consequence of movement or standing
- There is a causal relation between the movement or standing of the vehicle and the caused loss
- Possessor of the vehicle has civil liability related to causing damage

Traffic damage is defined as damage caused by parts separated from the vehicle or load, also movement of other items having causal relation with movement of the vehicle. It is also important whether the collision with the above specified items took place by the fault of the casualty or not and whether the casualty could have avoided the accident. Traffic damages causing injuries to the health of a physical person (personal injury) or property of a physical or natural person (property damage) shall be compensated. Traffic damage is evaluates as material loss in cash. Ministry of Finance determines the maximum limit of indemnities yearly. Size of compensation is calculated by the procedure prescribed in the Motor Third Party Liability Insurance Act.

Personal injury is:

- damage arising from temporary incapacity for work
- damage arising from permanent incapacity for work

- treatment costs of the casualty
- in case of damage arising from fatal traffic accident, reduced or loss of income
- pain and trouble related to personal injury.

The proprietary damage is:

- damage of breaking or destruction of property whereas in case of destruction or damage to the vehicle, the state fee paid for the actions of the Estonian State motor vehicle register is deemed as loss, if the register operations were performed in connection with the traffic damage. Also reasonable costs made for parking the vehicle are deemed as loss related to destruction or damage of the vehicle.
- reasonable and necessary costs for legal assistance and expert assessment.

Personal injury is compensated despite the liability of the policyholder in case personal injury is caused to the pedestrian also when the possessor of the vehicle is not responsible for the caused injury. Also the treatment cost of the driver having caused the traffic damage is compensated, despite his or her liability. The above specified shall not be applied when the pedestrian-casualty or the driver caused the traffic damage with self-mutilation or suicide or was under the influence of alcohol, narcotic drug, or psychotropic substance when the traffic damage occurred.
Proprietary damage of the person causing the traffic accident is not compensated.

3.6. Property insurance

The aim of the property insurance is compensation of the possible damages which may occur to entrepreneur's property by the insurer. There are several different types of insurance formed in the practice for insuring of properties like goods in transit insurance, voluntary motor insurance (casco), insurance of buildings and facilities against fire and natural disaster damage, insurance of equipment and production tools, insurance of stock reserve, etc. From the standpoint of management and control of supply chains, the **goods in transit insurance and stock reserve insurance** are more important than the property insurance. In case of the specified insurance contracts the **insurance object is the property** which value can be expressed in cash.

3.6.1. Goods in transit insurance

The aim of the goods in transit insurance is to protect business interests in case of damages occurring during transportation. Insurance of goods is necessary because of the limited liability of the carriers and freight forwarders participating in the transport process. Goods in transit insurance started from the marine cargo insurance contracts, hence it is known as marine cargo although at present the contract provisions are applied to all types of transport. Insurance is necessary for the party who, according to the delivery terms, has the liability for the cargo during the transport and who wishes to insure itself against possible economic losses or who has the insurance liability according to the goods contract (in case of CIF and CIP delivery terms).

The area itself is rather conservative and amendments to the conditions of the goods in transit insurance are made very rarely. The first conditions form 1906 (Marine Insurance Act 1906) were based on different court decisions and hence had quite a chaotic structure. Clauses of Institute of London Underwriters (ILU) from 1982 were a radical step which finally organised the area to be logically understandable and acceptable by the users. The globalisation of the world economy and long-term practice of use of goods in transit insurance have brought out a need to review these clauses and enter some corrections. The last corrections became valid on 01.01.2009 in International Underwriting Association of London – Institute Cargo Clauses[105] Amendments to clauses were based on the changed environment and the need to adapt the conditions to the market demands. It can be assumed that for the owner of goods the conditions became a little friendlier. The events that cannot be directly controlled by the owner of goods are not to be excluded any more. According to the previous conditions, some events and factors which cannot be controlled by the insurer were excluded. For example the insolvency of the carrier and package related topics in case the owner of goods was not able check the conditions. The factors which the owner of goods cannot control, he or she shall not be liable for. In a new version it is clearly stated that the loading and unloading process are covered with insurance cover. As a conclusion, it can be said that to large extent these are editorial amendments to avoid interpretation so that the clauses would be unambiguously understandable. To get a full overview, I recommend to examine the comparative analysis of clauses of 1982 and 2009 by Richards Hogg Lindley in *INSTITUTE CARGO CLAUSES 2009 A Comparison of the 1982 and 2009 Clauses with additional commentary*.[106]

The goods in transit contract like any other contains several liabilities for the policyholder which deal with packaging of goods, informing, selection of means of transport, etc. beside the insurer's liability to pay insurance compensation (according to Estonian laws within 14 (fourteen) days after satisfaction of the claim of the policyholder). Insurance contract is the best way to manage risks in case all policyholder's liabilities are performed.

Insurance of a single cargo. Single cargo insurance must be concluded before the beginning of transport and it is used when there are few insurable cargoes. The insurance is valid only during one cargo transport chain. In case of a single goods in transit insurance contract, the insurance period starts on the date indicated on the policy and ends on conditions provided for in insurance conditions and clauses. The insurance cover starts from the moment the cargo is loaded to the carrier's means of transport from the point of origin of the route. The insurance cover continues during the ordinary transportation and is valid until the cargo is unloaded from the carrier's means of transport in the consignee's warehouse or other point of destination of the route.

Yearly (multiple) contract. This type suits for the company with regular insurable cargo. The insurance object, conditions and payments, and way of informing about the insurance are previously

[105] *http://www.iua.co.uk/AM/Template.cfm?Section=Institute_CL_Clauses*

[106] *http://www.rhlg.com/pdfs/CargoClauses09.pdf*

agreed. In case of a multiple goods in transit insurance the insurance cover is valid for cargo which transport will start (start means loading of cargo on the carrier's means of transport will start) during the period indicated in the policy. The insurance cover continues during the ordinary transport and is valid until the cargo is unloaded from the carrier's means of transport in the consignee's warehouse or other point of destination of the route.

Insurance conditions. The insurance conditions in goods in transit insurance conform to the above specified conditions in the goods in transit insurance clauses prepared by the *International Underwriting Association of London* and are called *institute cargo clauses* (A), (B) or (C). Such conditions are known and recognised in world trade and generally unambiguously understandable.

In addition to general conditions it is possible to insure special risks, including theft, filch, and non-delivery.

In addition to direct property damage of transported goods, the costs related to general accident or rescue works which have been provided in or determined with freight contract and/or laws and practice and made for prevention of damage or in connection with avoidance of damage will be compensated.

Depending of the probability of possible risks, the goods in transit insurance can be concluded for insuring three different risk sets. Use of CIF and CIP delivery terms requires minimum insurance or the basic insurance should be used. The full insurance gives the best cover.-

3.6.1.1. Whole risk/full insurance – *institute cargo clauses (A), 1/1/2009 CL 382*

The insurance covers all risks related to damaged or loss of insured goods except the below specified standard exceptions. The conditions and the described exclusions of a specific contract must be exactly followed.

This insurance method is all risks managing type of insurance which does not cover the costs caused by the following reasons:

- Non-life insurance liability to third parties
- Costs of damaged goods or removal or destruction of goods
- Indirect loss (e.g. lost profit, etc.)
- Intentional action of a policyholder or malicious intended action or negligence
- Transport of contraband or illegal goods
- Packaging not meeting the requirements except in case the policyholder and its workers was not present when the goods were packaged and cargo prepared and the policyholder was not aware of such insufficient and improper packaging before the start of the delivery. Packaging also means loading and fastening of cargo to the container or van in the point of consignment of the route.
- Normal loss caused by the properties of the goods

- Damages caused by frost or heat
- Arresting of goods
- Influence of nuclear reaction or radioactive contamination
- War or strike
- Terroristic act (actions due to political reasons)
- Costs of cleaning of the means of transport
- Costs for liquidating the environmental pollution
- Damages or loss of goods due to delay

3.6.1.2. Basic insurance – institute cargo clauses (C), 1/1/2009 CL 384

Insurance covers the damage or loss of transported goods caused by:

- Fire or explosion
- Vessel or craft being stranded, grounded, sunk or capsized
- Overturning or derailment of land conveyance
- Collision or contact of vessel craft or conveyance with any external object other than water
- Discharge of cargo at a port of distress
- Damage and costs related to general average sacrifice
- Jettison or washing overboard.

3.6.1.3. ***Extended Basic insurance*** *– institute cargo clauses* (C), 1/1/2009 CL 383

Insurance covers the damage or loss of transported goods caused by the risks indicated in clause (C), and additionally:

- Lightning, earthquake, avalanche, or volcano eruption
- Collision, derailment, or overturning of land conveyance in their transport on water
- Entry of sea, lake, or river water into vessel, craft, container, hold, conveyance, or place of storage
- Total damage of any package during loading onto or unloading from vessel, craft, or means of transport.

Insurance conditions of the insurer must certainly be examined before conclusion of insurance contracts. The reason is that all insurers have not simultaneously transferred to new insurance conditions and hence there may be some differences. Also this introduction is explaining only the main points. In order to facilitate selection between different clauses, please find in the Annex the table where the risks insured by different clauses have been compared.

War and strike risks. Deliveries can be insured by some insurances also for war and strike, but for war risks only in case of marine and air transport. These clauses have been updated as well (Institute War Clauses (cargo)1/1/2009 CL385 and Institute Strikes Clauses (cargo)1/1/2009 CL386).
Indirect damages like costs caused by delays are not compensated in either of the insurances.

Risks insured with goods in transit insurance According to 01.01.2009 clauses	**Clauses** ***Institute Cargo Clauses***		
	A	**B**	**C**
Fire or explosion	yes	yes	yes
Vessel or craft being stranded, grounded, sunk, or capsized (general accident)	yes	yes	yes
Capsize or derailment of land conveyance	yes	yes	yes
Collision or contact of vessel, craft, or conveyance with any external object other than water	yes	yes	yes
Discharge of cargo at a port of distress	yes	yes	yes
Damage and costs related to general average sacrifice	yes	yes	yes
Jettison or washing overboard.	yes	yes	yes
Lightning, earthquake, avalanche, or volcano eruption	yes	yes	no
Collision, derailment, or overturning of land conveyance in their transport on water	yes	yes	no
Entry of sea, lake, or river water into vessel, craft, container, hold, conveyance, or place of storage	yes	yes	no
Total damage of any package during loading onto or unloading from vessel, craft, or means of transport	yes	yes	no
Other risks not excluded below (e.g. theft, results of intentional acts of third persons (except terrorism), etc.	yes	no	no
Exclusions of above specified clause A (B, C)			
• **Non-life insurance liability to third parties**	no	no	no
• Costs of elimination or destruction of damaged goods (e.g. not gained profit)	no	no	no
• **Intentional action of a policyholder** or malicious intended action or negligence	no	no	no
• Transport of contraband or illegal goods	no	no	no
• **Packaging not meeting the requirements** except in case the policyholder and its workers was not present when the goods were packaged and cargo prepared and the policyholder was not aware of such insufficient and improper packaging before the start of the delivery. Packaging also means loading and fastening of cargo to the container or van in the point of consignment of the route.	no	no	no
• Normal loss caused by the properties of the goods	no	no	no
• Damages caused by frost or heat	no	no	no
• Arresting of good, influence of nuclear reaction or radioactive contamination	no	no	no
• War or strike	no	no	no
• Terroristic act (actions due to political reasons), costs of cleaning of means of transport	no	no	no
• Costs for liquidating the environmental pollution	no	no	no
• Damages or loss of goods due to delay	no	no	no

Insurable value Insurable value is the market value of the transported goods in the point of origin of the route. The market value of the goods is determined according to the accompanying documents, invoices, and consignment notes. In case of non-commercial cargo the value of the cargo is determined according to the customs declaration or agreement of the parties of the insurance contract. **Upon agreement of the parties of the insurance contract, insurable value can contain also transport cost, customs duties, and cargo insurance costs in addition to market value of the cargo.** Upon agreement of the insurance contract, the cargo can be insured with up to 10 % over-insurance.

Insurance premium. Amount of insurance premium is usually presented in percentage and it is influenced by:

- Type of goods and its sensitivity to damage
- Package and its durability
- Vehicle and its age and technical conditions
- Type of transport
- Route and its length
- Insurance contract and its scope; which insurance cover is needed
- Damage statistics of previous period.

Insured event is occurrence of direct damage. In case of an insured event, the insurer must:

- Hinder occurrence of additional damage
- Make a written application about the damage either to the carrier or its representative before reception of goods keeping in mind the due dates of this event. If the damage is noticed before reception of goods, it must be informed immediately when the damage is noticed (according to the Law of Obligations Act not later than within 7 days). It is recommended to check this term in the contract conditions of the insurer.
- Take care of the damaged goods until the insurer has the opportunity to review it or if agreed otherwise
- Discontinue unloading of goods for insurance inspection, if needed
- Inform the insurer or its representative immediately and follow the instructions of the insurer
- Inform the police if it can be assumed that this event is related to crime
- Damaged good is not a reason for the policyholder not to receive goods.

Documents for receiving compensation. In case of an insured event the following documents must be delivered to the insurance company:

- application
- Insurance policy (if existing)
- Copy of the original of the invoice
- Copy of the freight document (waybill: consignment note, delivery note, bill of lading)
- Copy of the claim to the transport company, freight forwarder
- Compiled protocols and decisions in case the event was taken to court.
- Other insurance documents referring to the insured.

3.6.2. Voluntary motor insurance (Casco)

The aim of the voluntary motor insurance is to compensate the proprietary loss caused to the insured object or the vehicle. In addition to such types of contracts the compensation for damages caused by fire, natural disaster, vandalism, theft, and robbery is usually added to the traffic accident risk. The list of insurance risks specifically depends on the conditions of insurance and possible exclusions upon their application. In case of such types of contract the size of risk depends on the region where the vehicle is used, e.g. on a fact whether the green card is valid in the used region. On the other hand the repair costs may vary a lot by regions and size of possible damages is formed based on that. In case the means of transport is obtained based on the lease contract or leased based on operational leasing, the lease company dictates also the risks to be insured and other essential requirements regarding the insurance contract. As a rule, the lease company or the lessor is the recipient of the compensation of insurance.

3.6.3. Company's property insurance

Object of insurance is a company or property owned by the company which can be explicitly described and has a determinable market price. For example buildings, facilities, equipment, stock reserve, and other property. The most common and oldest type of property insurance is the fire insurance of buildings. It is usually expedient to add also insurance against water damages, natural disasters, vandalism, burglary, robbery. Often also the costs for liquidating the consequences, like cleaning or destruction costs are also included among the insurable damages. It is always expedient to investigate the list of managed risks and exclusions when concluding an insurance contract. Special type of insurance is usually failure insurance of electronic devices (also databases and programmes), equipment and machinery.
The insurance risks usually do not cover:

- War
- Nuclear catastrophe
- Caused by effect of radioactive substances
- Riot and coupe
- Strike or lockout
- Terrorism

Before conclusion of such type of contract it is expedient to minimise or more precisely, optimise the possible risks. Such measures are:

- Reduction of fire hazard of the building structures
- Inspection and maintenance of electrical supply and installation equipment
- Building of fire detection and alarm systems and automatic fire extinguishing systems
- Installation of safety systems to impede access to strangers and hence minimising the probability of thefts
- Organising the guard of property or use of security companies.

With such measures we are able to reduce the insurance premiums and the costs of administration of property. Part of the above specified measures can be pre-requisites of the insurer at conclusion of an insurance contract.

3.6.4. Business interruption insurance

It is expedient to conclude business interruption insurance in case it is not possible to recover the production as a consequence of some damage in the volume preceding the damage control. Such situation may occur when the production hall, equipment, etc. are destructed or damaged. In that case, despite the property insurance contract, the entrepreneur has to pay series of fixed costs during a certain period and hence returning to the market may become a problem. The business interruption insurance contract is concluded to compensate the costs in such situation. In that case the **lost profit** is the insured object.

Business interruption insurance is not an independent insurance but it is usually related to the property insurance contract. This can be concluded to the company as a whole or a production unit but not to a single technological process. At special agreement, it is also an option to insure a danger arising from external conditions, e.g. from energy system.

Conclusions of such type of insurance contracts consider the economic results of previous periods and the planned profit, costs, and turnover of the insurance period. Hence due planning of the financial services and accounting are the pre-requisites for conclusion of an insurance contract. The insurer usually demands conclusion of a general property insurance contract when concluding of a business insurance contract.

3.6.5. Insurance of personal injury

When the insurance contract is concluded, it is recommended that the insurance period would coincide with the fiscal year. This facilitates calculation of damages during the validity of the insurance contract. In order to avoid under insurance, the increase percentage must be taken into account. Companies in red are usually not insured. If the turnover, costs, and profit increase remarkably during the contract period, the sum insured must be increased to avoid under insurance.
Insurance of personal injury
From the point of view of the logistic companies, two options of personal injuries must be observed:

1. Accident insurance, i.e. insuring of employees against accidents, especially for accidents at work
2. Travel insurance (cargo carriers). Insurance of employees at business trips against accidents, illnesses, and possible treatment costs.

The aim of such contract is to diminish the risks of the policyholder in case of risks related to employees, especially if an accident or illness takes place outside the borders of the company's country of location. Consequences of chronic disease are not usually covered with such contracts.

3.7. Conclusion of an insurance contract

Conclusions of insurance contracts usually follow the need for insurance and despite the type of the contract it is a unified process. In case of all contracts it is important to determine the object, possible risks to be managed, and to avoid the effect of exclusions in case of a possible insured event. The following diagram shows the process of conclusion of an insurance contract (see Figure 21).

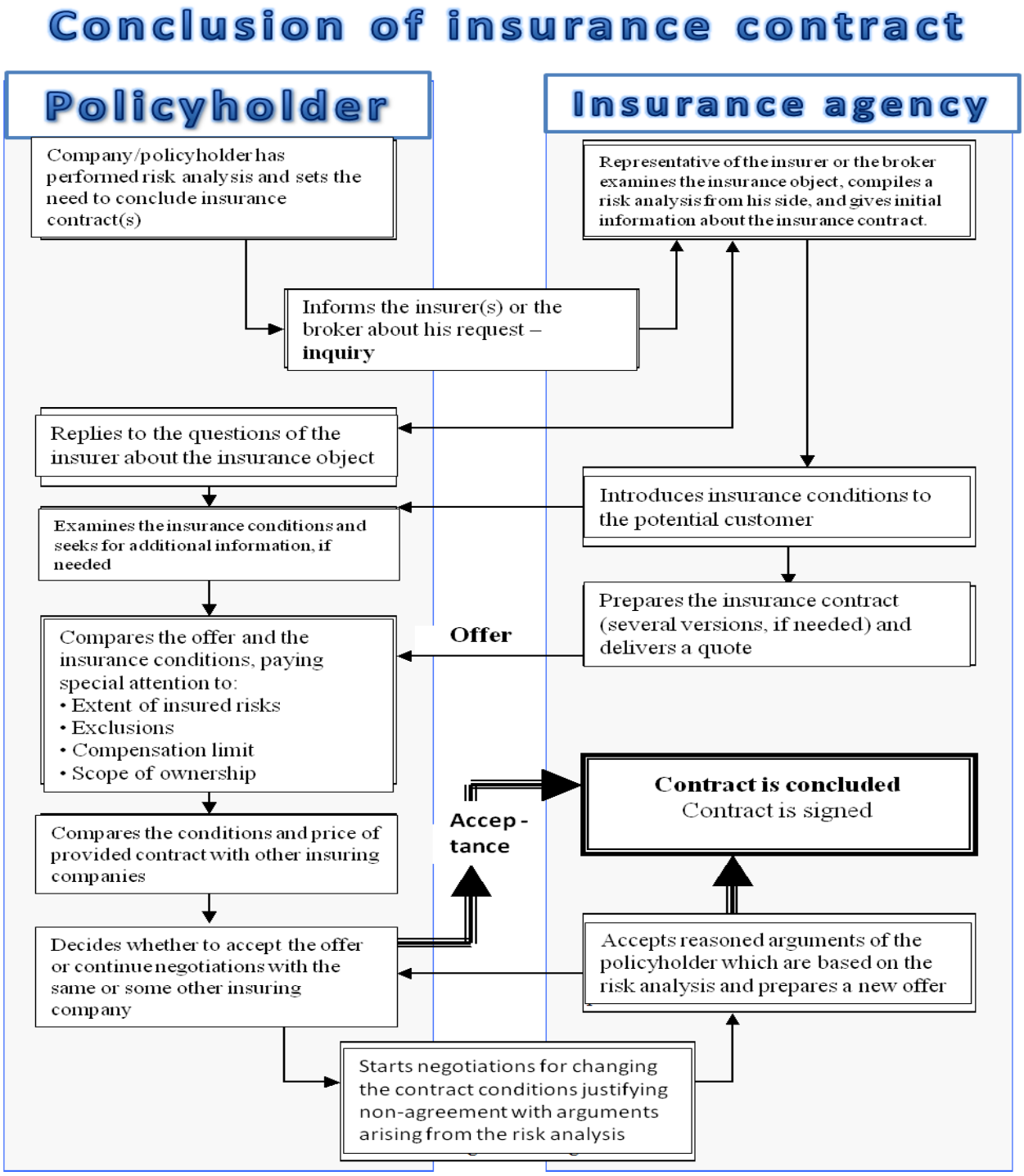


Figure 21 Conclusion of an insurance contract

3.8. Damage adjustment in case of insured event and the insurance disputes

3.8.1. Adjustment of insured events

When the insured event occurs, the insurer as well as the policyholder have several obligations. At first there is the mutual obligation to inform where the policyholder informs the insurer about all circumstances of the insurance event and the insurer informs about its activities at handling this event. An insured event can be policyholders direct proprietary loss or third party's claim in case of a liability insurance. The liabilities of the parties of the insurance contract can be described as follows:

Policyholder's liabilities:

- In case of liability insurance to inform the insurer about the circumstances which may form a claim against it The insurer must be informed about such circumstances during the time prescribed in the insurance contract from the moment the policyholder became aware (or should have become aware) about such circumstances. Otherwise the insurer has the right to compensate the claims based on the preceding actions only partially or refuse from compensation. To inform the insurer immediately and no later than during time prescribed in the contract starting from the moment it became aware (or should have become aware) about the occurrence of the proprietary loss or claim filed against it
- Simultaneously with the notification, submit all documents confirming the occurrence of the proprietary loss or a claim presented in the previous notification to the insurer (data about the possible eyewitnesses or third persons).
- In case of a liability insurance, to inform about the request for a claim (dispute) to be solved by court and the applied measures (the policyholder is liable for submitting the proof).

Insurer's liabilities:

- Register the notification about occurrence of proprietary loss or a claim filed against the policyholder
- Introduce the procedure of solving the insured event and the compensation of a claim to the policyholder
- Submit the list of documents necessary for determination of the occurred proprietary loss or cause of occurrence of a claim.
- Find out in cooperation with the policyholder whether the claim against the policyholder is grounded and true
- Negotiate with the policyholder to find out all circumstances of the event
- Compensate the legal protection costs, if prescribed in the contract.
- Pay the compensation of insurance in case of insured event according to the contract conditions.

3.8.2. Damage adjustment process

Damage insurance process includes primarily the activities of the insurer and the policyholder in case of an insured event where the most important are the activities of the insurer in order to find out the circumstances of the insured event and to exclude the insurance fraud. The aim of the damage

insurance process is to decide whether to pay compensation or refuse from paying it. The damage insurance process includes series of chronologically ordered activities, which the following diagram illustrates[107](see Figure 22).

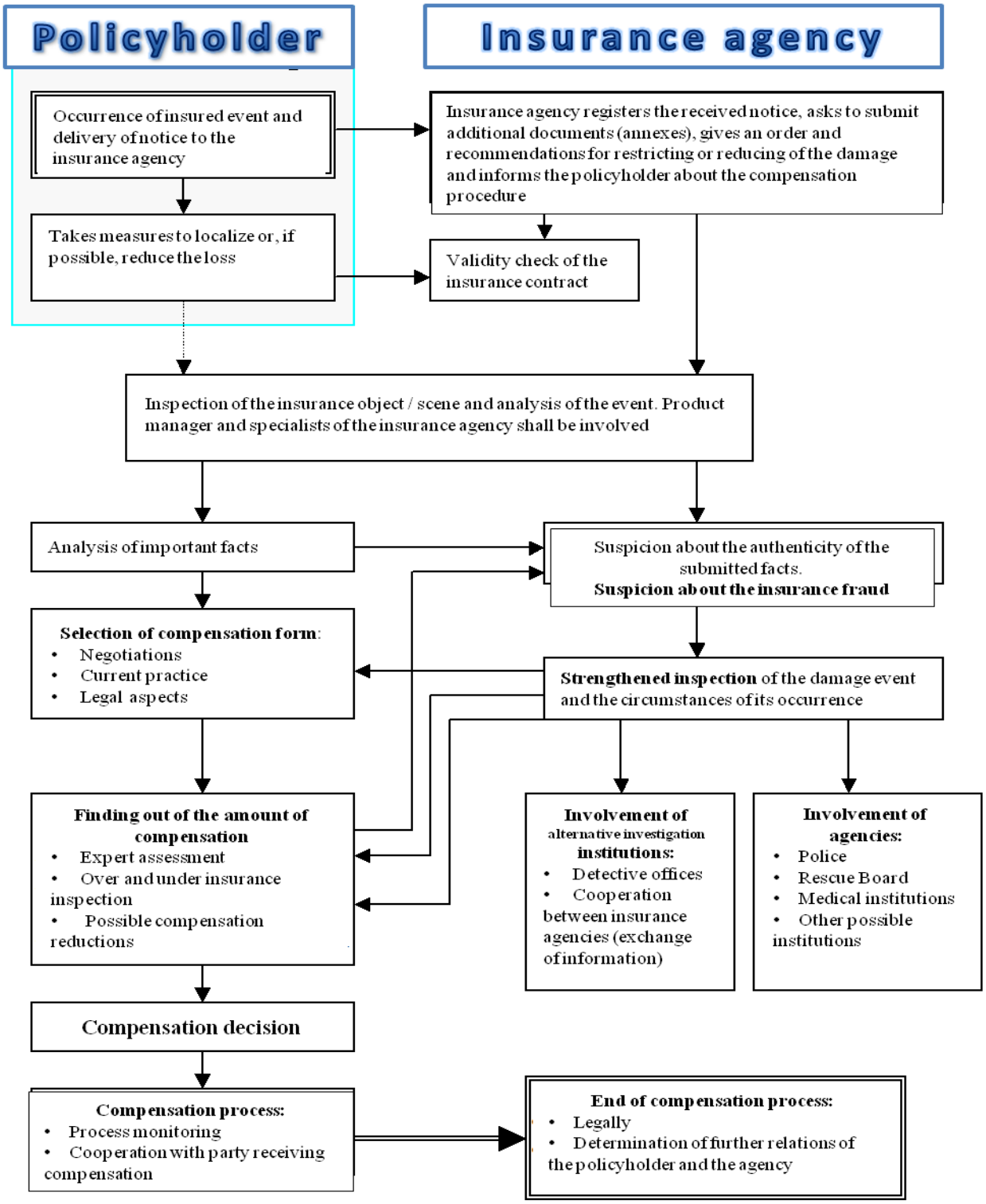


Figure 22 Process of damage adjustment

[107] Aare Matti Inglist Kahjukindlustuse käsiraamat (Manual of non-life insurance). Äripäeva Kirjastuse AS 2001 (in Estonian).

Compensation principles and payment. The insurer is liable for recovering the situation preceding the occurrence of the insured event, whether by

- monetary compensation of direct loss
- recovery of the insurable object
- replacement of insurable object.

In some cases only the monetary compensation is an option, e.g. in case of business interruption insurance, mainly liability insurance, etc. On the other hand, the compensation of motor third party liability insurance and vehicle's casco insurance are normally addressed to the recovery of the vehicle. The best solution would be to determine the method of compensation of insurance in the insurance contract in order to dispose of any misunderstandings in the course of the damage adjustment. Compensation of insurance is paid within **two weeks from the decision of compensation** by the insurer or after the relevant court decision takes effect.

Insurance fraud. In case of the insurance activity there is always a notable danger that the insurance contract is used for framing the insured event and defrauding compensation. According to the business paper Äripäev, every seventh insurance case is considered to be a fraud and in case of every third insurance event the policyholder tries to increase the actual sum insured. This fact forces insurance agencies to increase significantly the costs for handling insurance events and hence this involves also increasing of the insurance premiums collection. In other words the policyholders pay also for insurance frauds. Hence it is essential to hinder such kind of activities.

The insurance frauds can be:

- In case of the **over insurance** the policyholder assesses its property remarkably more expensive from the market or recovery price.
- **Double insurance** where the same object is insured by different insurance agencies; it is the most common insurance fraud.
- **False information** about the insured object and risks, i.e submission of incomplete or false data in the insurance application where as a rule, not all possible risks have been declared or their existence is denied.
- **Application of compensation in case of uninsured damage.** In that case the facts about insured event have been misrepresented. More common in case of motor third party liability insurance and voluntary vehicle insurance, e.g. for covering repair needs.
- **Framed insured events** where the insured event is framed, e.g. theft, etc.
- **Intentional infliction of insured events**, e.g. setting fire to warehouse with non-liquid goods, etc.
- **Fraud at damage adjustment** where the aim to get compensation higher than actual damage.

In some cases the policyholder may unintentionally become an insurance fraudster in the eyes of the insurance agency. For example an occasion where the policyholder who has no experience nor skills for assessing the real estate, takes advice from the insurance agent for determining the recovery price of the insured object. The insurance agent receives his payment depending on the contract volume and hence is interested in the amount of the sum insured. As a consequence, the

policyholder will unintentionally conclude an over insurance contract. However, in case of an insured event, the insurance agency will not reckon with these circumstances.

Circumstances which enable to fight with the insurance fraud and separate honest policyholders from the fraudsters are identified as a rule during analysis of the insured event. These circumstances can be divided into general and specific.

General circumstances:

- It is not possible to find out the reason of occurrence of damage.
- Occurrence of damage at off-hours (at night and at holidays)
- Incomplete accounting and reporting
- Poor economic situation of the policyholder
- Suspicious loss during previous periods
- Leaving out essential facts at conclusion of the contract
- Double insurance
- Ratio of damaged sum and sum insured
- Too much activity for accelerating compensation of damage
- Hiding the data
- Fake lack of interest
- Threatening with court, media, etc.
- Eagerness to find compromise in order to receive compensation
- Missing proof about (recently) obtained property
- Too much proof is submitted
- Oral explanations and personal contact are preferred to written ones
- Submission of suspicious receipts
- Unreliability or lack of witnesses
- Discrepancy of explanations
- Lack or alleged loss of written proof
- Insured event is not logical.

As the list shows, each policyholder can be regarded as a fraudster according to some general circumstance. Hence it is important to know that the insurance companies observe the behaviour of policyholders from their perspective and there is no sense to give any reason for suspicion and elongate the case.

In addition to general circumstances there are also specific circumstances which differ by different types of insurance like dysfunctioning of security systems during the occurrence of proprietary damage, damages preceding the repair of equipment or buildings, etc.

3.8.3. Right of recourse

Right of recourse is the right to recover a bad debt. This means that a person who has compensated the damage caused by another person has the right to demand the amount back from the person having caused the damage. With conclusion of an insurance contract, the policyholder waivers the right of recourse to the insurer. Hence the insurer has the right to collect the damage occurred and compensated for the policyholder by the persons having caused damage to the insurable object.

For example the insurance company compensates the damage caused to the owner of goods in case of damages occurring during the transport process since the owner has insured the freight forwarder's liability who in this case was the bearer of carrier's liability. At the same time the insurance agency has the right to collect the sum of damage from an actual carrier (or the insurance agency having insured liability of an actual carrier) who actually caused the damage to goods.
The injured party will still keep the right of claim at the extent of the deductible for collecting damage from the offender.

The right of recourse can be applied only in cases where all the following conditions are simultaneously performed:

- Damage of the injured party
- Causal connection between the act of the tortfeasor and occurrence of damage
- Illegal character of the act of tortfeasor
- Fault of the tortfeasor at occurrence of damage has been identified
- The insurer has compensated damage.

Application of right of recourse has specifications regarding the motor third party liability insurance. These specifications have been listed in the Motor Third Party Liability Insurance Act.

Application of right of recourse has also exclusions in case of which the recourse is not presented like in cases where the damage was caused by the employee of the policyholder, person authorised by him, etc., unless it is intentionally malicious activity. In that case the insurer does not pay the compensation and the case is not considered as insured event.

3.8.4. Insurance disputes

Insurance contract is primarily relation under the law of contracts (law of obligations) and hence to certain extent the discrepancies between contract parties are inevitable. In case of such disputes the policyholder is always a weaker side as the insurance agency remains the dominating party in compilation of the contract conditions and payment of compensation.

The reasons for occurrence of insurance disputes are primarily the interpretation of the insurance contract, often also perfunctory attitude towards the insurance contract. Conditions of the insurance are not examined and the policyholder’s liabilities are overlooked.
The fastest ways to finish the insurance disputes are negotiations. In case of failure of the negotiations, e.g. size of the sum insured, it is expedient to involve expert assessment. There is a possibility that either of the parties appoints one expert who can be a person with professional knowledge and experience. Such experts appoint a leading expert based on mutual agreement. Experts should be independent. When the standpoints of the experts do not coincide, the standpoint of the leading expert is decisive. The dispute in that case if solved based on the expertise results. If the insurer refuses to pay compensation, the policyholder has the right to address the court according to the legislation valid in the Republic of Estonia. Insurance disputes are always civil disputes. The first stage of the court dispute is the county court and if that stage court does not give a desired result, the circuit court can be addressed.

4. Revision

In order to understand better the first part of the examined study material, it would be reasonable to go through the topics once again. For this purpose, the originator recommends to find the answers to the below specified questions.

4.1. Contract of purchase and sale

1. Which conditions should the description of the contract object meet in the offer?
2. Which activities and notices can be deemed as an accept?
3. Which areas have been regulated by INCOTERMS delivery terms and which areas have been left unregulated?
4. Why is it expedient to use the delivery terms in conclusion of international contract of sale?
5. How does the delivery term EXW differ from other ones and what does it enable?
6. How to define the delivery terms of marine transport used in supply chains of contracts of sale and why do these terms differ from the delivery terms used in case of all other types of transport?
7. What is the difference between the Incoterms and Combiterms? Who are the target groups?
8. Why should the contract describe the payment date and the payment method? How do these two influence the seller and the buyer?
9. How is it possible to realise the condition of cash on delivery?
10. What are the differences between the documentary collection and documentary credit?
11. What are the seller's risks in case of documentary collection?
12. Which conditions should meet the documents prepared by the exporter? Where can you obtain relevant information about these documents?
13. Which conditions should the goods invoice meet on export and why is it called a commercial invoice?
14. How is the pro forma invoice used?
15. What does the approval and legalisation of the invoice mean?
16. Why are the certificates needed in case of international trade transactions?
17. Which are the most often used certificates and which conditions should they meet?

18. How do the health and phytosanitary certificates differ? Who issues them and on what conditions?
19. Describe the most common certificates of origin. How do these certificates differ and what are their similarities?
20. Which certificates are necessary for carrying out transport processes and which are needed for realisation of export-import transactions?
21. Assess exporter's financial risks and importers risks of goods in case of use of the delivery terms and payment method in the following table (49 possible versions). Assess possible versions which might be inexpedient for use and which are reasonable to be preferred. What are the versions in case of which the exporters and importers risks are managed in the best and most balanced way?

Delivery term	**Payment conditions/payment methods**						
	Open Account		**Lunatasu** *[Cash on Delivery]* (COD)	**Dokumendiinkasso** *[Documentary Collection]*		**Akreditiiv** *[L/C – Letter of credit; D/C – Documentary Credit]*	
	Prepayment (CWO)	Commercial credit		Raha dokumentide vastu *Cash Against Documents (CAD)*	**Dokumendid veksli aktsepteerimise vastu** *Documents Against Acceptance* (DAA)	**Koheselt makstav akreditiiv** *(payment at sight)*	**Tähtajalin e akreditiiv** *(deferred payment)*
EXW	?						
FCA			?				
CPT							
CIP					?		
DAT							
DAP		?					
DDP							?

22. How does the exporter certify its performance of contractual obligations in case of documentary credit (certified to importer's bank)? What are the necessary documents?

23. In case of what kind of transaction volumes (sum of transaction expressed in cash) the different combinations can be used and when it is not reasonable to use them?
24. Find the same answers (q 21, 22 and 23) in case of using marine transport clauses (28 possible versions).

Delivery term	**Payment conditions/payment methods**						
	Avatud arve *[Open Account]*		**Lunatasu** *[Cash on Delivery]*	**Dokumendiinkasso** *[Documentary Collection]*		**Akreditiiv** *[L/C – Letter of credit; D/C – Documentary Credit]*	
	Prepayment (CWO)	Commercial credit	(COD)	Raha dokumentide vastu *Cash Against Documents* (CAD)	**Dokumendid veksli aktsepteerimise vastu** *Docunents Against Acceptance* (DAA)	**Koheselt makstav akreditiiv** *(payment at sight)*	**Tähtajaline akreditiiv** *(deferred payment)*
FAS	?						
FOB			?				
CFR							
CIF					?		

25. Why is the UN Convention about contracts for the international sale of goods (Vienna Convention 1980) important in the context of international trade?
26. Which are the three main principles on which the practice of conclusion of contract of sale relies on (Vienna convention)?
27. What is the role of International Chamber of Commerce (ICC) in forming of the practices of international trade?
28. Which are the standard contracts of the International Chamber of Commerce and what is their aim?
29. What is meant by the conditions of the model contract (e.g. *ICC Model International Sale Contract)* and how can they be used?
30. In what form and which object parameters reflect the Preshipment Inspection Certificates and what is certified with survey certificates?

4.2. Risk management and insurance practices

1. Why is it important (recommended) to make the **risk analysis** before conclusion of an insurance contract?
2. Which **pre-requisites** are taken as the basis for calculation of the expected damages at risk analysis?
3. How are the amount of damages and frequency of their occurrence related at exposure of risks and which circumstances does this connection follow?
4. What are the **objective risks** and what are the **subjective risks?** Why is the term "objective risks" justified?
5. What is the difference between the **liability insurance** and the property insurance?
6. How is the liability **insurance object** described?
7. Damages caused by which **risks** are insured with liability insurance?
8. What is the difference between the motor third party liability insurance and other liability insurances?
9. What is meant by the term **"exclusions"?** Which are the most common exclusions?
10. Which **laws** regulate the insurance activities and which ones the insurance contract?
11. What does the term **"liability of policyholder"** means and based on what is it determined?
12. What does the term "limit of compensation" mean and how is it determined?
13. What is the difference between the freight forwarder's liability insurance and carrier's liability insurance?
14. When is it expedient to insure the cargo(es)?
15. How is the insurable value of the cargo determined? Can the insurable value differ from cargo value? If yes, to what extent?
16. What is the difference between the clauses A, B, and C of the goods in transit insurance?
17. What is an insurance contract and what is an insurance policy?
18. Based on which data is the insurance premium determined?
19. What is the key question of the loss adjustment?
20. Which circumstances will be checked on loss adjustment?
21. What is meant by the terms "recourse" and "right of recourse"?
22. What are the principles of the loss compensation?

Reference literature and source material

1. Ekspedeerija Käsiraamat EEA/ERAA 2000
2. Logistika Käsiraamat Äripäeva Kirjastus Tallinn 2002-20012
3. Incoterms 2010
4. Aare-Matti Inglist, Kahjukindlustuse Käsiraamat. Äripäeva Kirjastuse AS Tallinn 2001.
5. Dr. D Bland, Kindlustus: põhimõtted ja praktika. Tallinn 1996.
6. Jaana Liigand, Ettevõtte riskid, äratundmine ja maandamine. Äripäeva Kirjastuse AS Tallinn 2005.
7. Urmas Volens. Müügileping. Äripäeva Kirjastuse AS. 2006.
8. Bowersox, D. J., Closs, D. J. (1996). Logistical Management. Michigan: Michigan State University.
9. The ICC Model International Sale Contract. ICC Publication No. 556
10. The ICC Model International Distributorship Contract. ICC Publication No. 646 E
11. Richards Hogg Lindley **INSTITUTE CARGO CLAUSES 2009** A Comparison of the 1982 and 2009 Clauses with additional commentary. 2009 http://www.export911.com/e911/ship/newInsti.htm#xComparison
12. Swedbank. Documentary credits, collections and bank guarantees https://www.swedbank.ee/static/pdf/business/finance/trade/Hansa_A4_dokmaksed_eng_UUS.pdf (2012)
13. Jüri Suursoo, Peter Vulla Veoseohutus Tallinna Tehnikakõrgkool Tallinn 2004.
14. Statistics Estonia http://www.stat.ee/en
15. Legislation of the Republic of Estonia https://www.riigiteataja.ee/en/
16. ERGO Kindlustuse AS. Homepage. Conditions of insurance https://www.ergo.ee/corporate-clients/
17. If P&C Insurance AS Homepage Conditions of insurance. http://www.if.ee/web/ee/eng/commercial/pages/default.aspx
18. AS Inges Kindlustus. Homepage Conditions of insurance http://www.inges.ee/?id=3&aid=14 (in Estonian)
19. *International Underwriting Association of London – Institute Cargo Clauses* http://www.iua.co.uk/IUA_Test/Documents/Clauses/IUA_Test/Documents/Clauses_folder/clauses_home.aspx?hkey=825191ea-7fa4-4ec7-b491-8babe192efd3
20. Миротин, Л. Б., Сергеев, В. И. 1999, Основы логистики. Москва. ИНФРА-М
21. Томилин В. Н. 2000, Транспортное страхование в России и станах Балтии. Москва. Аникл.
22. Е.В. Жиряева. Товароведение. 2-е издание Издательсто ПИТЕР 2003

Legislative regulations

23. United Nations Convention on contracts of the international sale of goods 11 April 1980 Vienna
24. European Commission DG of Justice, Freedom and Security. Summary about the legislation of the community about the legal cooperation in civil and trade matters. Luxemburg. Publications Office of the European Union 2009
25. Law of Obligations Act Passed on 26. 09. 2001 with law (RT I 2001, 81, 487), entry into force 1. 07. 2002
26. Insurance Activities Act Passed on 08.12.2004 RT I 2004, 90, 616 entry into force 01.01.2005 Last version RT I, 02.11.2011, 6 https://www.riigiteataja.ee/akt/102112011006
27. Motor Third Party Liability Insurance Act [RT I 2007, 55, 368 – entry into force 02.11.2007] Passed on 10.04.2001 RT I 2001, 43, 238 entry into force 01.06.2001. https://www.riigiteataja.ee/akt/131122010011
28. Convention concerning International Carriage by Rail (COTIF 1980)
29. Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929) and The Hague protocol. Montreal convention: Convention for the Unification of Certain Rules for International Carriage by Air - Montreal, (1999)
30. Convention on the Contract for the International Carriage of Goods by Road (1956) –(CMR Convention)
31. International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (1924) -(Hague-Visby Rules)
32. Соглашение о Международном Железнодорожном Грузовом Сообщении (СМГС 1951)