**International Trade Law**

**Unit-3**

**Transnational Commercial Laws**

There are many attempts to define the subject. As an initial matter, the concept is to be kept distinct from notions such as ‘international business law’ or ‘international economic law’. In the book whose authors are teaching a course so titled since the mid-1990s it is introduced as follows:

‘Transnational commercial law consists of that set of rules, from whatever source, which governs international commercial transactions and is common to a number of legal systems. Such commonality is derived from international instruments of various kinds, such as conventions and model laws, and from codification of international trade usage adopted by contract, as exemplified by the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce and the Model Arbitration Rules issued by the United Nations Commission and International Trade Law (UNICITRAL). Legislative guides of the kind published by UNICITRAL and UNIDROIT are also contributing to the process of harmonization at international level. So too are ‘soft law’ restatements, such as the UNIDROIT Principles of International Commercial Contracts, which though not binding are regularly resorted to by arbitral tribunals and influence the shaping of domestic legislation in developing as well as ‘developed’ countries. Underpinning these is the lex mercatoria, consisting of the unwritten customs and usages of merchants, and general principles of commercial law.’

# Meaning and Scope of Transnational Commercial Law

International commercial contracts are sale transaction agreements made between parties from different countries.

The methods of entering the foreign market, with choice made balancing costs, control and risk, include:

* Export directly.
* Use of foreign agent to sell and distribute.
* Use of foreign distributor to on-sell to local customers.
* Manufacture products in the foreign country by either setting up business or by acquiring a foreign subsidiary.
* Licence to a local producer.
* Enter into a joint venture with a foreign entity.
* Appoint a franchisee in the foreign country.

**Convention on the International Sale of Goods**

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is the main convention for international sale of goods. Established by UNCITRAL, the Convention governs the conclusion of the sale contract; and buyer and seller obligations, including respective remedies. It is not concerned with the validity or provisions of the contract nor its effect on the property sold.

**Contract of carriage of goods**

In the carriage of goods by sea, air or land, goods may be lost, damaged or deteriorated. The bill of lading (transport document used almost exclusively for carriage of goods by sea) is a contract of carriage between the consignor, the carrier and consignee that acts as a receipt of transfer of goods and as a negotiable instrument. The bill of lading also determines rights and liabilities agreed between parties to an international sale contract. Also reservations as to the quality and quantity of the goods are marked on the bill when accepting goods so as to stifle any accusations from the consignee of damage in transit. The consignor retains ownership of the goods until the bill of lading is transferred to the consignee. Most bills of lading today are governed by international conventions such as the Hague Rules (International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading); Hague-Visby Rules, which is a revised version of the Hague Rules by a Brussels Protocol in 1968; and Hamburg Rules. These rules impose minimum responsibilities and liabilities that cannot be softened by contract. On the other hand, the United States and the United Kingdom adopted the Carriage of Goods by Sea Act (COGSA).

**Title to sue**

Where loss or damage to goods is incurred by a party to the contract of carriage, that person may sue directly on that contract. A seller under a CIF (‘cost, insurance, freight’) sale contract will have entered into the contract of carriage directly with the carrier, and can sue as principal. Where loss or damage occurs when risk has passed to the buyer, the buyer may benefit under the contract of carriage with the seller, depending on contract terms between buyer and seller.

Under an FOB (‘free on board’) sale contract the bill of lading determines if either the seller or the buyer is named as the shipper. This will ascertain who has contracted as principal to bring action against the carrier. Where loss or damage occurs before risk passes to the buyer, the seller may benefit under the contract of carriage made with the buyer.

**Whom to sue**

The party to be sued on a contract of carriage may vary from the shipowner, the charterer or the freight forwarder. A distinction is made between the physical carrier and the legal carrier, the person contractually responsible for the carriage. If the consignee is suing on an implied contract of carriage or there is negligent carriage of goods, it is the physical carrier against whom action is brought.

**Insurance in international trade**

Insurance against perils is an important aspect of international commercial transactions. In the event of loss or damage to cargo due to hazards during voyage, an insured party will be able to recover losses from the insurer. The type of insurance required depends on the mode of transport agreed between parties to transport the cargo. Such insurance forms include marine, aviation and land.

The type of insurance contract depends on the Incoterm adopted by the parties in a sale contract. A CIF sale contract requires the seller to obtain insurance cover for the voyage. An FOB contract however places no obligation on the buyer or seller to obtain insurance, although it is prudent for the buyer to protect against potential losses. It is not uncommon for the buyer in a FOB contract to request the seller to arrange insurance on an understanding that they will reimburse the insurance costs incurred.

#### ****Payment in international trade****

Two broad methods of financing international transactions are direct payment between seller and buyer; or finance through banks. Practically, payment is effected by the following methods:

Cash in Advance: buyer transfers funds to the seller’s account in advance pursuant to the sale contract.

Open Account: arrangement for the buyer to advance funds to an ‘open account’ of the seller on a fixed date or upon the occurrence of a specified event, such as delivery of the goods.

Bills of Exchange: negotiable instrument representing an order to the bank in writing to pay a certain sum of money to the bearer (or specified person) on demand, or at a fixed or determinable future time.

Documentary Bill: seller (drawer) draws a bill of exchange on the buyer (drawee) and attaches it to the bill of lading. The idea is to secure acceptance of the bill of exchange by the buyer; and the buyer is bound to return the bill of lading if he does not honour the bill of exchange.

Documentary Credits: the bank, on behalf of buyer, issues a letter of credit undertaking to pay the price of the sale contract on condition that the seller complies with credit terms. Upon presentation of necessary commercial documents verifying shipment of goods, the bank collects payment for goods on behalf of the seller. In the collection process, the buyer pays for goods in exchange for title documents. Under this method the bank guarantees the buyer’s title to the goods and guarantees payment to the seller.

Harmonization of international commercial law

This predominantly occurs through legal instruments governing commercial contracts is limited in its scope since it depends upon incorporation into contracts. For any pragmatic effect there must be a degree of uniformity in commercial practice between the contracting parties.

Model Laws promote the unification of international commercial law. Some examples are the UNCITRAL Model Laws on:

* International Commercial Arbitration.
* International Credit Transfers 1992 (largely adopted by the EU).
* Procurement of Goods, Construction and Services 1994.
* Electronic Signatures.
* Electronic Commerce 1996.

International organisations that attempt to harmonise international commercial law include:

* UNCITRAL: Important in the areas of international carriage of goods, international bills of exchange and promissory notes, and international arbitration.
* UNIDROIT: Important in the area of international financial leasing and sale of goods. Notably UNIDROIT has created the ‘Principles of International Commercial Contracts’ which in the future could provide the source of lex mercatoria.
* Hague Conference on Private International Law: The organisation drafts conventions in the field of private international law.
* ICC: Influential in harmonising international contract terms and global arbitration practices.
* **Evolution of Law Merchant**

**History**

The lex mercatoria was originally a body of rules and principles laid down by merchants to regulate their dealings. It consisted of rules and customs common to merchants and traders in Europe, with some local variation. It originated from the need for quick and effective jurisdiction, administered by specialised courts. The guiding spirit of the merchant law was that it ought to derive from commercial practice, respond to the needs of the merchants, and be comprehensible and acceptable to the merchants who submitted to it. International commercial law today owes some of its fundamental principles to the lex mercatoria. This includes choice of arbitration institutions, procedures, applicable law and arbitrators, and the goal to reflect customs, usage and good practice among the parties.

* Goods and services flowed freely during the medieval merchant law, thus generating more wealth for all involved. It is debated whether the law was uniform in nature, was spontaneous as a method of dispute resolution, or applied equally to everyone who subordinated to it. The lex mercatoria was also a means for local communities to protect their own markets. Local kings or lords extracted taxes and set trade restrictions. In 1303 Edward I issued the Carta Mercatoria, a charter to foreign merchants in England, which guaranteed them freedom to trade, with certain protections and exemption under the law. Although the charter was revoked by Edward II, due to complaints by English merchants, foreign merchants retained most of their rights in practice, but these would vary widely with the march of time, events and changes to state policy.
* Lex mercatoria (from the Latin for “merchant law”), often referred to as “the Law Merchant” in English, is the body of commercial law used by merchants throughout Europe during the medieval period. It evolved similar to English common law as a system of custom and best practice, which was enforced through a system of merchant courts along the main trade routes. It functioned as the international law of commerce. It emphasised contractual freedom and alienability of property, while shunning legal technicalities and deciding cases ex aequo et bono. A distinct feature was the reliance by merchants on a legal system developed and administered by them. States or local authorities seldom interfered, and did not interfere a lot in internal domestic trade. Under lex mercatoria trade flourished and states took in large amounts of taxation.

**Administration**

* The lex mercatoria was the product of customs and practices among traders, and could be enforced through the local courts. However, the merchants needed to solve their disputes rapidly, sometimes on the hour, with the least costs and by the most efficient means. Public courts did not provide this. A trial before the courts would delay their business, and that meant losing money. The lex mercatoria provided quick and effective justice. This was possible through informal proceedings, with liberal procedural rules. The lex mercatoria rendered proportionate judgements over the merchants’ disputes, in light of “fair price”, good commerce, and equity.
* Judges were chosen according to their commercial background and practical knowledge. Their reputation rested upon their perceived expertise in merchant trade and their fair-mindedness. Gradually, a professional judiciary developed through the merchant judges. Their skills and reputation would however still rely upon practical knowledge of merchant practice. These characteristics serve as important measures in the appointment of international commercial arbitrators today such as the European Commissioner for Trade, Phil Hogan holds the present post.
* The lex mercatoria owed its origin to the fact that the civil law was not sufficiently responsive to the growing demands of commerce, as well as to the fact that trade in pre-medieval times was practically in the hands of those who might be termed cosmopolitan merchants, who wanted a prompt and effective jurisdiction. It was administered for the most part in special courts, such as those of the guilds in Italy, or the fair courts of Germany and France, or as in England, in courts of the Staple or Piepowder.
* **Legal concepts**
* The lex mercatoria was composed of such usages and customs as were common to merchants and traders in all parts of Europe, varied slightly in different localities by special peculiarities. Less procedural formality meant speedier dispensation of justice, particularly when it came to documentation and proof. Out of practical need, the medieval lex mercatoria originated the “writing obligatory”. By this, creditors could freely transfer the debts owed to them. The “writing obligatory” displaced the need for more complex forms of proof, as it was valid as a proof of debt, without further proof of; transfer of the debt; powers of attorney; or a formal bargain for sale. The lex mercatoria also strengthened the concept of party autonomy: whatever the rules of the lex mercatoria were, the parties were always free to choose whether to take a case to court, what evidence to submit and which law to apply.
* **Reception**
* Merchant law declined as a cosmopolitan and international system of merchant justice towards the end of medieval times. This was to a large extent due to the adoption of national commercial law codes. It was also connected with an increasing modification of local customs to protect the interests of local merchants. The result of the replacement of lex mercatoria codes with national governed codes was the loss of autonomy of merchant tribunals to state courts. The main reason for this development was the protection of state interests.
* The nationalisation of the lex mercatoria did not neglect the practises of merchants or their trans-border trade. Some institutions continued to function, and state judges also were appointed for their merchant expertise, just as modern commercial arbitrators. The laws of the merchants were not eradicated, but simply codified. National codes built on the principles laid down by trade commercial practise and to a large extent they embodied lex mercatoria substantial rules. This was for example the case in France. The Code Commercial was issued in 1807, where lex mercatoria rules were preserved to govern formation, performance and termination of contracts. In effect, the nation states reconstituted the lex mercatoria in their image.

# Sources of Transnational Commercial Laws

The Mercantile Law in India developed with the enactment of the Indian Contract Act, 1872. Before this, all the commercials transactions were governed by the personal laws of the party to contract. For example Hindu Law, Mohammedan Law, etc. The first attempt to codify Mercantile Law in India was made by the Britishers in 1872 by the enactment of Indian Contract Act. Since then, numerous laws have been enacted in India to regulate commercial transactions, such as Partnership Act, Negotiable Instruments Act, etc.

#### ****Sources of Indian Mercantile Law****

The Indian Mercantile Law has developed from many sources. The following are the main sources of Indian Mercantile Law:

* **English Mercantile Law:**

The Indian Mercantile Law owes its origin to the English Mercantile Law. For a very long time, India was under the control of Britishers. Therefore, it has a direct influence on Indian law, and Indian Mercantile Law is no exception to it. The dependence of Indian Law on English Law is so high that, in the absence of any provision related to the issue in question, the direct recourse is to refer to the English Mercantile Law. The sources of English Mercantile Law are Common Law, Equity, Law Merchant, and Statute Law. The Common law of England or the judge made law is the preliminary source of Indian Law. It is the unwritten law of England that consists of judicial decisions and customs. With the passage of time, this law became rigid. This rigidity led to the development of Equity in England.

Statute law is the written law of England enacted by the Parliament of England. This written law always overrides the unwritten law i.e. Common Law and Equity. It is one of the very vital sources of Mercantile Law of England. For example English Partnership Act, 1890, Sale of Goods Act, 2015, etc.

* **Acts enacted by Indian Legislature:**

The greater part of Indian Mercantile law is Legislature enacted. The Acts enacted by the Indian Parliament are that source of law which makes it possible to bring uniformity in Indian Law. Changes can be brought in Indian Law effectively by legislative enactments.

**Judicial Decisions:**

Judges interpret the law and put life into the black and white letters of law for its effective implementation. The decision of judges is binding on all subsequent decisions unless overruled by a higher court or a larger bench. For example, the decision of a High Court is binding on all the lower courts under its jurisdiction, and the decision of a Supreme Court is binding on all the courts of India except for the Supreme Court itself. The decision of the Supreme Court has persuasive value for the same bench, but it has binding value in the case, a larger bench gave the earlier ruling.

* **Customs and Trade Usages:**

Customs and Usages had played a very vital role in regulating the commercial transactions in India when there was no codified law. In fact, the codified law of India has given superseding powers to the customs and usages. For example, Section 1 of Indian Contract Act states, “Nothing herein contained shall affect any usage or custom of trade not inconsistent with the Act.” A custom becomes binding when certain pre-requisites are fulfilled. For example, antique, reasonable, consistent with law, not against public policy. Then, the custom is recognized by courts, and it becomes a legal obligation. Hundi is the best example of this, and it has been recognized by the Negotiable Instruments Act as well.

**Movement towards unification of national commercial Laws**

# UNIDROIT

UNIDROIT (formally, the International Institute for the Unification of Private Law; French: Institut international pour l’unification du droit privé) is an intergovernmental organization whose objective is to harmonize international private law across countries through uniform rules, international conventions, and the production of model laws, sets of principles, guides and guidelines. Established in 1926 as part of the League of Nations, it was reestablished in 1940 following the League’s dissolution through a multilateral agreement, the UNIDROIT Statute. As at 2019 UNIDROIT has 63 member states.

UNIDROIT has prepared multiple conventions (treaties), but has also developed soft law instruments. An example are the UNIDROIT Principles of International Commercial Contracts. Distinctly different from the Convention on the International Sale of Goods (CISG) adopted by UNCITRAL, the UNIDROIT Principles do not apply as a matter of law, but only when chosen by the parties as their contractual regime.

#### ****Conventions****

Unidroit has over the years prepared the following international Conventions, drawn up by Unidroit and adopted by diplomatic Conferences convened by member States of Unidroit:

* Convention relating to a Uniform Law on the International Sale of Goods (The Hague, 1964)
* Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague, 1964)
* International Convention on Travel Contracts (Brussels, 1970)
* Convention providing a Uniform Law on the Form of an International Will (Washington, D.C., 1973)
* Convention on Agency in the International Sale of Goods (Geneva, 1983)
* Unidroit Convention on International Financial Leasing (Ottawa, 1988)
* Unidroit Convention on International Factoring (Ottawa, 1988)
* UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)
* Convention on International Interests in Mobile Equipment (Cape Town, 2001) (including Protocols on Aircraft (2001) and Railway rolling stock (2007) and Space assets (2012))
* Geneva Securities Convention (Geneva, 2009)

UNIDROIT is depositary of two of its conventions: the Cape Town Convention (including its three protocols) as well as the Geneva Securities Convention.

For many years UNIDROIT prepared the background studies for international conventions that were subsequently finalized by other international organisations. To be noted among these, are the Convention on the Contract for the International Carriage of Goods by Road (CMR), finalized by the UN Economic Commission for Europe in 1956, and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade finalized by UNCITRAL in 1991.

In addition, UNIDROIT has adopted the 2002 Model Franchise Disclosure Law; the 2008 Model Law on Leasing; and the 2011 Model Provisions on State Ownership of Undiscovered Cultural Objects (in co-operation with UNESCO); and published the UNIDROIT Principles of International Commercial Contracts (1994, 2004, 2010 and 2016); the Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts (2013); the ALI / UNIDROIT Principles of Transnational Civil Procedure (in co-operation with the American Law Institute) (2004); the Principles on the Operation of Close-Out Netting Provisions (2013); the Guide to International Master Franchise Arrangements (1998, second edition 2007), and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (2015).

# UNCITRAL

The United Nations Commission on International Trade Law (UNCITRAL) (French: Commission des Nations Unies pour le droit commercial international (CNUDCI)) is a subsidiary body of the U.N. General Assembly (UNGA) responsible for helping to facilitate international trade and investment.

Established by the UNGA in 1966, UNCITRAL’s official mandate is “to promote the progressive harmonization and unification of international trade law” through conventions, model laws, and other instruments that address key areas of commerce, from dispute resolution to the procurement and sale of goods.

UNCITRAL carries out its work at annual sessions held alternately in New York City and Vienna, where it is headquartered.

#### History

When world trade began to expand dramatically in the 1960s, national governments began to realize the need for a global set of standards and rules to harmonize national and regional regulations, which until then governed international trade.

#### ****Membership****

UNCITRAL’s original membership comprised 29 states, and was expanded to 36 in 1973, and again to 60 in 2004. Member states of UNCITRAL are representing different legal traditions and levels of economic development, as well as different geographic regions. States includes 12 African states, 15 Asian states, 18 European states, 6 Latin American and Caribbean states, and 1 oceanian state. The Commission member States are elected by the General Assembly. Membership is structured so as to be representative of the world’s various geographic regions and its principal economic and legal systems. Members of the commission are elected for terms of six years, the terms of half the members expiring every three years.

#### ****Activities****

* Coordinating the work of active organizations and encouraging cooperation among them.
* Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws.
* Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practice, in collaboration, where appropriate, with the organizations operating in this field.
* Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade.
* Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade.
* Establishing and maintaining a close collaboration with the UN Conference on Trade and development.
* Maintaining liaison with other UN organs and specialized agencies concerned with international trade.

#### ****Conventions****

A convention is an agreement among participating states establishing obligations binding upon those States that ratify or accede to it. A convention is designed to unify law by establishing binding legal obligations. To become a party to a convention, States are required formally to deposit a binding instrument of ratification or accession with the depository. The entry into force of a convention is usually dependent upon the deposit of a minimum number of instruments of ratification.

UNCITRAL conventions:

* The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) (1958)
* The Convention on the Limitation Period in the International Sale of Goods (1974)
* The United Nations Convention on the Carriage of Goods by Sea (1978)
* the United Nations Convention on Contracts for the International Sale of Goods (1980)
* The United Nations Convention on International Bills of Exchange and International Promissory Notes (1988)
* The United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (1991)
* The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (1995)
* The United Nations Convention on the Assignment of Receivables in International Trade (2001)
* The United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
* The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008)
* The United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (2015)
* The United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation) (2018)

#### ****Model laws****

A model law is a legislative text that is recommended to States for enactment as part of their national law. Model laws are generally finalized and adapted by UNCITRAL, at its annual session, while conventions requires the convening of a diplomatic conference.

* UNCITRAL Model Law on International Commercial Arbitration (1985)
* UNCITRAL Model Law on International Credit Transfers (1992)
* UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
* UNCITRAL Model Law on Electronic Commerce (1996)
* UNCITRAL Model Law on Cross-Border Insolvency (1997)
* UNCITRAL Model Law on Electronic Signatures (2001)
* UNCITRAL Model Law on International Commercial Conciliation (2002)
* Model Legislative Provisions on Privately Financed Infrastructure Projects (2003)
* UNCITRAL Model Law on Secured Transactions (2016)
* UNCITRAL Model Law on Electronic Transferable Records (2017)
* UNCITRAL Model Law on the Recognition and Enforcement of Insolvency-Related Judgments (2018)

UNCITRAL also drafted the:

* UNCITRAL Arbitration Rules (1976) (text) revised rules will be effective August 15, 2010; pre-released, July 12, 2010
* UNCITRAL Conciliation Rules (1980)
* UNCITRAL Arbitration Rules (1982)
* UNCITRAL Notes on Organizing Arbitral Proceedings (1996)

CLOUT (Case Law on UNCITRAL Texts)

The Case Law on UNCITRAL Texts system is a collection of court decisions and arbitral awards interpreting UNCITRAL texts.

CLOUT includes case abstracts in the six United Nations languages on the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna, 1980) and the UNCITRAL Model Law on International Commercial Arbitration (1985).

Legislative Guides

A legislative guide aims to provide a detailed analysis of the legal issues in a specific area of the law, proposing efficient approaches for their resolution in the national or local context. Legislative guides do not contain articles or provisions, but rather recommendations. Legislative Guides are developed by the UNCITRAL Working Groups and subsequently finalized by the UNCITRAL Commission in its annual session.

UNCITRAL has adopted the following legislative guides:

* UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)
* UNCITRAL Legislative Guide on Insolvency Law (2004)
* UNCITRAL Legislative Guide on Secured Transactions (2007)
* UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property (2010)

# Carriages of goods by Sea, Air, Multimodal Transportation

Multimodal transport (also known as combined transport) is the transportation of goods under a single contract, but performed with at least two different modes of transport; the carrier is liable (in a legal sense) for the entire carriage, even though it is performed by several different modes of transport (by rail, sea and road, for example). The carrier does not have to possess all the means of transport, and in practice usually does not; the carriage is often performed by sub-carriers (referred to in legal language as “actual carriers”). The carrier responsible for the entire carriage is referred to as a multimodal transport operator, or MTO.

Article 1.1. of the United Nations Convention on International Multimodal Transport of Goods (Geneva, 24 May 1980) (which will only enter into force 12 months after 30 countries ratify; as of May 2019, only 6 countries have ratified the treaty) defines multimodal transport as follows: “‘International multimodal transport’ means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country

**Multi modal Transportation of Goods Act:** In view of the provisions of Section (3) of the Multimodal Transportation of Goods Act (MMTG), 1993, no person shall carry on or commence business on multimodal transportation unless he is registered under the Multimodal Transportation of Goods Act,1993. “Multimodal Transport Contract” to mean” a contract under which Multimodal Transport Operator undertakes to perform or procure the performance of Multimodal Transportation against payment of freight”.

**Multimodal transport document:**Multimodal transport document is issued when the transportation of goods involve more than one mode of transport. It is a document evidencing contract for performance of combined transport.

Hence, in Multi modal transport document, the carriers are called as multimodal transport operator who takes the liability for safe carriage of goods by different modes of conveyances from the place of receipt of the goods to place of delivery. It is to be noted that this document will only confirm the receipt of the goods and not shipment on board.

**Types of Multimodal Transport Organizations:**

**Various types of organizations are operating as MTOs but they may be grouped under two categories:**

**Vessel Operating MTOs**

* Individual shipping companies or groups of consortia of shipping companies.
* The large exporters who utilize their own multimodal transport operations by engaging their owned chartered ships.

**Non-vessel Operating MTOs (NVO-MTOs)**

* Freight forwarders.
* Road transport operators.

### ****Vessel Operating Multimodal Transport Operators (VO-MTOs)****

Normally the liability of the Ship-owners for carriage of goods is attached when the cargo is safely placed on board the vessel. However, due to introduction of containerization in International trade, many shipowners start providing their services to include carriage during land transit and even carriage by Air.

Such combination   of modes of transport recognizes the vessel operating companies as MTOs. The ship-owners do not own or operate to carry the goods by road, rail or air but arranges transportation of goods by subcontracting with unimodal carriers.  They also sub contract inland stevedoring and warehousing services.

### ****Non-vessel Operating Multimodal Transport Operators (NVO-MTOs)****

Other than Ocean carriers, some transport operators may also arrange through transport or door-to-door delivery service of cargo by using more than one mode of transport.  Instead of subcontracting the inland or air segments of the transport, they may subcontract to the Ocean carrier but they will not own or operate the vessels for ocean voyage. Therefore, they are regarded as “non-vessel operating MTOs” or ” non-vessel operating common carriers”( NVOCCs).

### ****Does multimodal transport service is accepted to all shippers:****

Many shippers do not like to select a single carrier or by conference carriers for availing of different quality of service and prices depending on their requirements.

According to some shippers that a conference carrier does outstanding job in terms of service, documentation, communication, safety and security but it was expensive.  But when they utilize the services of non conference carrier and NVO-MTOs , they do not get the service for inland transportation for which they have to have make a separate arrangement.

The most striking point is this that percentagewise, selection of NVO-MTO is higher where shipper used to arrange inland transportation and rest of the transport is arranged by NVO-MTO. The following are the reasons for preferring single factor door to door rates and preferring to arrange for inland transportation only.

### ****Responsibilities and Liabilities of MTO:****

The MTO remains responsible for the goods throughout the period from the time they receive the consignment until the same is delivered. The MTO shall be liable for loss resulting from:

* Any loss of or damage to the consignment;
* Delay in delivery of the consignment and any consequential loss or damage arising from such delay, where such loss/ damage or delay in delivery took place while the consignment was in his charge.

It is, however, provided that the MTO shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss/ damage or delay in delivery.

### ****Limits of liability:****

* Where the MTO becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment was taken in charge by the MTO, and if the stage of transit at which such loss or damage occurred is not known, then the liability of the MTO shall not exceed 2 SDR per kg of gross weight of the consignment lost or damaged, or 666.67 SDR per package or unit lost or damaged, whichever is higher.
* If no sea or inland water way leg is involved in the transit, then the limitation is based solely on weight, i.e., 8.33 SDR per kg. of gross weight of the goods lost or damaged.
* If the stage of transport at which such loss of, or damage occurred is known, the limit of liability of the MTO shall be determined in accordance with the provisions of the relevant law (or convention governing limitation of liability) applicable in relation to the mode and stage of transit during the course of which such loss of, or damaged occurred.

**Notice of loss /damage to the goods:**

Notice shall be given by the consignees in writing to the MTO immediately if the losses are apparent. However, if the loss/ damage is not apparent; such notice shall be given within six days from the date of delivery.

### ****Limitation on Legal Action:****

The MTO shall not be liable under any of the provisions of the act unless legal action against him is brought within 9 months of:

* The date of delivery of the goods; or
* The date when the goods should have been delivered; or
* The date on and from which the consignee has the right to treat the goods as lost.

**International sales of Goods**

# Vienna convention on Contract for International sale of Goods

The United Nations Convention on Contracts for the International Sale of Goods (CISG), sometimes known as the Vienna Convention is a multilateral treaty that establishes a uniform framework for international commerce. Ratified by 93 countries, known as “Contracting States”, the Convention governs a significant proportion of world trade, making it one of the most successful instruments of international trade law. Guatemala and Laos are the most recent parties to the Convention, acceding to it on 12 December 2019 and 24 September 2019, respectively.

The CISG was developed by the United Nations Commission on International Trade Law (UNCITRAL) beginning in 1968, drawing from previous efforts in the 1930s undertaken by the International Institute for the Unification of Private Law (UNIDROIT). In 1980, a draft text was introduced in a conference in Vienna, and following weeks of discussion and modification, it was unanimously approved and opened for ratification; the CISG subsequently came into force on 1 January 1988, after being ratified by 11 countries.

#### ****Major absentees****

India, South Africa, Nigeria, and the United Kingdom are the major trading countries that have not yet ratified the CISG.

The absence of the United Kingdom, a leading jurisdiction for the choice of law in international commercial contracts, has been attributed variously to: the government not viewing its ratification as a legislative priority, a lack of interest from business in supporting ratification, opposition from a number of large and influential organisations, a lack of public service resources, and a danger that London would lose its edge in international arbitration and litigation.

There is significant academic disagreement as to whether Hong Kong, Taiwan, and Macau are deemed parties to the CISG due to China’s status as a party.

**Potential Contracting States**

Rwanda has concluded the domestic procedure of consideration of the CISG and adopted laws authorising its adoption; it will subsequently enter into force once the instrument of accession is deposited with the Secretary-General of the United Nations. Kazakhstan has also made progress in the adoption process.

**Future directions**

Greater acceptance of the CISG will come from three directions. First, it is likely that within the global legal profession, as the numbers of new lawyers educated in the CISG increases, the existing Contracting States will embrace the CISG, appropriately interpret the articles, and demonstrate a greater willingness to accept precedents from other Contracting States.

Second, businesses will increasingly pressure both lawyers and governments to make international commercial disputes over the sale of goods less expensive, and reduce the risk of being forced to use a legal system that may be completely alien to their own. Both of these objectives can be achieved through use of the CISG.

Finally, UNCITRAL will arguably need to develop a mechanism to further develop the Convention and to resolve conflicting interpretation issues. This will make it more attractive to both business people and potential Contracting States.

**Differences with country legislation relating to the sale of goods**

Depending on the country, the CISG can represent a small or significant departure from local legislation relating to the sale of goods, and in this can provide important benefits to companies from one contracting state that import goods into other states that have ratified the CISG.

Differences with US legislation (the UCC)

In the U.S., all 50 states have, to varying degrees, adopted common legislation referred to as the Uniform Commercial Code (“UCC”). UCC Articles 1 (General Provisions) and 2 (Sales) are generally similar to the CISG. However, the UCC differs from the CISG in some respects, such as the following areas that tend to reflect more general aspects of the U.S. legal system:

* **Terms of Acceptance:** Under the CISG, acceptance occurs when it is received by the offeror, a rule similar to many civil law jurisdictions which contemplate for service to be effective upon receipt. By contrast, the U.S. legal system often applies the so-called “mailbox rule” by which, acceptance, like service, can occur at the time the offeree transmits it to the offeror.
* **“Battle of the Forms”:** Under the CISG, a reply to an offer that purports to be an acceptance, but has additions, limitations, or other modifications, is generally considered a rejection and counteroffer. The UCC, on the other hand, tries to avoid the “battle of the forms” that can result from such a rule, and allows an expression of acceptance to be operative, unless the acceptance states that it is conditioned on the offeror consenting to the additional or different terms contained in the acceptance.
* **Writing Requirement:** Unless otherwise specified by a ratifying State, the CISG does not require that a sales contract be reduced to a writing. Under the UCC’s statute of frauds (inherited from the common law), contracts selling goods for a price of $500 or more are generally not enforceable unless in writing.

Nevertheless, because the U.S. has ratified the CISG, it has the force of federal law and supersedes UCC-based state law under the Supremacy Clause of the Constitution. Among the U.S. reservations to the CISG is the provision that the CISG will apply only as to contracts with parties located in other CISG Contracting States, a reservation permitted by the CISG in Article 95. Therefore, in international contracts for the sale of goods between a U.S. entity and an entity of a Contracting State, the CISG will apply unless the contract’s choice of law clause specifically excludes CISG terms.

**Drafting of International Commercial contracts**

One of the most important subjects in international trade is drafting international commercial contracts. International commercial contracts include 3 expressions: contract, commercial, and international. Contract means an agreement which provides the relations between 2 or more parties. These relations can be in different fields such as sales and purchase of goods, lease, mortgage, guarantee, or granting financial facilities. A commercial contract is a charter entered into for business purposes and commercial needs.

An international contract implies that the parties to the contract trade in foreign countries and/or the contract is to be enforced in foreign countries.

There are various kinds of international commercial contracts such as: transport contracts, insurance, finance, commercial agency, international distribution, license, technical and production cooperation, joint venture, build- operate-  transfer (BOT), and different kinds of counter-trade contracts.

**Governing Law of Contract**

Conflict of Laws

International contracts contrary to local contracts are related to more than one national legal systems and whereas a single contract cannot be governed by different national legal systems, conflict of laws occurs. If the states have the same conflict of laws rules, governing law of a contract can be chosen easily. Attempts have internationally been made to unify the conflict of laws rules of the countries.3 examples of these efforts are as follows: The first and most successful attempt is Convention on the Law Applicable to Contractual Obligations (Rome Convention 1980).The second one is Convention on the Law Applicable to International Sales of Goods(The Hague 1955) and the third one is an Inter-American Convention on Conflict of Laws Concerning Checks(1975).

Another activity is to unify the substantive rules governing the subjects of international trade. When the laws and rules of all states concerning one subject are uniform, it doesn’t matter which state’s law governs the contract.

Determination of Applicable Law

In principle since the national legal systems have no uniform rules, a single contract may lead into different rights, obligations and consequences in different legal systems. The international merchants seriously wish to determine their contract rights and obligations safely and assuredly not vaguely. Determination of the applicable law of contract makes it possible for the parties to predict the contract effects more safely and avoid unfavourable and unexpected consequences.

Main Points in Drafting Contracts

There are many points in drafting international contracts which shall be taken into consideration. Some of these points are as follows:

Preparation of Primary Draft

The first step in drafting international contracts is determination of the purposes and how to achieve them. At first, to achieve a contract’s ends must be planned and then based on which, contractual conditions must be drafted. When the contract general framework was determined, usually one of the parties undertakes to prepare the primary draft of the contract for the future negotiations. In preparation of primary draft, the previous contracts entered into concerning the same or similar contract subject are very important. The model contract specially those prepared by international organizations or famous companies are very useful. However, to make the use of the standard and sample contracts must be precisely adapted to present conditions.

Preliminary Agreements

In daily and usual transactions, negotiations and drafting the contract are basically performed simultaneously. However, there are several cases in economic and social relations where the parties can’t for some reasons finalize and draft their considered contract promptly and it’s necessary to provide preliminaries before entering into the contract and/or conduct negotiations to reach the mutual agreement concerning their accepted conditions.

Preliminary agreements are a set of letters of promise, contracts, memoranda of agreement, memoranda of understanding, protocols and so on denoting the parties’ intention on conducting negotiations and/or finalizing one or more contracts in the future. There are different phrases or expressions for preliminary agreements and contracts in English language such as “contract to contract”, “contract to bargain”, “agreement to agree”, “contract to negotiate”, “preliminary contracts”, “letter of intent (LOI)”, “letter of understanding(LOU)”, “heads of agreement(HOA)”, “memorandum of understanding(MOU), “protocol”, “memorandum of intent(MOI)”, and “agreement in principles”.

Contract Forms

International contracts may be entered into in different forms. An international contract may be formed orally and/or by letters, fax, or e-mail. In important contracts, at first, the text of contract is negotiated and then signed by the parties. But the merchants who trade with each other for the years may make their orders only on the phone. However, almost all international contracts are in writing.

A Contract Text: Brief or Detailed

A contract may be formed in detail or briefly. A detailed contract provides the subjects including rights and obligations of the parties, contract termination, rewards and penalties, dispute settlement, governing law and other details. The less brief a contract, the more interference of governing law to interpret and supplement the contract provisions. The more contract price or the longer contract term, or the more complicated the contract subject, the more details must be predicted in the contract.

A contract text: Simple or Complicated

A principle in drafting a contract is that the contract provisions must be transparent and precise as much as possible to express the parties’ intention clearly. Transparency in a contract avoids the future disputes and in case of disputes, the dispute settlement authorities can interpret the contract simpler and more definite. If the usual meaning of the words and expressions are not clear, it is suggested to make clear the meaning of those words in definition section of the contract. When a phrase is defined in a contract, it must be identified in what part of the contract those words and phrases are used in their defined meaning and in what part in their usual meaning. In English contracts, the defined words and phrases are usually written in capital letters.

Choice of Law and International Commercial Arbitration

When considering an international commercial contract, two questions are of key importance:

(1) Where will disputes arising under the contract be heard

(2) What law or rules govern the contract?

Researching the Applicable Law and Rules

Conventions

In some cases, the law applicable to a contract will be provided for in a treaty. The United Nations Commission on International Trade Law (UNCITRAL) has created three treaties that provide the applicable rules governing certain contracts.

CISG

The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (the “CISG”) is the most widely adopted treaty providing substantive contract rules. The 84 CISG States account for more than 75% of world trade. The CISG’s provisions cover the treaty’s scope of application, contract formation, obligations of the contractual parties, remedies, passing of risk, damages, etc. The CISG was drafted by UNCITRAL in response to a failed earlier attempt to unify the law of sales through two conventions prepared by the International Institute for the Unification of Private Law (“Unidroit”) and adopted in 1964, one covering the international sale of goods and the other the formation of contracts for the international sale of goods. The conventions were seen as primarily Western European instruments and did not gain widespread support.

Scope of Application:

The CISG’s scope is limited to commercial contracts for the cross-border sale of goods (see CISG, Part I, Articles 1-5). Under its Article 6, contractual parties may opt out of the CISG or any of its provisions, but it will otherwise apply in a variety of situations.

Primarily, it will apply to contracts concluded by parties from two or more CISG States (CISG, Article 1(1)(a)). In addition, the CISG will govern contracts between parties from two or more States where the rules of private international law point to the application of the law of a CISG State (CISG, Article 1(1)(b)), including, for example, in most cases where parties have chosen the law of a CISG State to govern the contract.

If contractual parties have selected arbitration to settle disputes, the CISG will also apply in the above cases. In a potential slight difference from some State courts, however, and depending on the law at the seat of arbitration, arbitral tribunals may also apply the CISG where parties have chosen it on its own and without reference to any State law. Finally, in certain cases, an arbitral tribunal may apply the CISG on its own initiative, for example, as part of the lex mercatoria.

Uniform Interpretation:

Successful implementation of the CISG requires more than countries to adopt it and parties to use it. Courts and arbitral tribunals must interpret the CISG in a uniform manner and not through the lens of domestic laws. If not, they will create divergent precedents, and the benefits of a harmonized regime will not be realized as parties will incur transaction costs through the need for endless assessment of how each jurisdiction interprets the Convention.

CISG, Article 7, addresses this issue by creating a public international law obligation for States, via their courts, to interpret the Convention with regard “to its international character and the need to promote uniformity in its application”. This obligation requires courts to interpret the CISG autonomously, without regard to the national law, and taking into account foreign case law and scholarly writings. For many courts, this is a novel approach as it is not typical to consider foreign case law instead of, for example, domestic judicial precedent or legislation. As provided below, the UNCITRAL Secretariat and others have created several mechanisms to assist in this endeavor.

Uniform interpretation may also be aided through reference to the CISG’s travaux préparatoires, or negotiating history.

# International Payments

If you have shopped online on international portals or have received payments from abroad, you would have wondered about how the payments flow across the world and which banks and financial institutions underpin global commerce and trade.

Further, if you work in a corporate that has global supply chains with international suppliers and customers, you would be again dealing with a complex network of institutions and banks that route the payments from one end of the supply chain or the value chain to the other.

In addition, when nations trade with each other and when central banks transact with each other as well as banks in different countries deal with each other, then they are all participating in the international payment system that is the bedrock of global payment flows.

### ****Components and Constituents of the International Payment System****

So, who and what are the constituents and components of the international payment system? To start with, **banks and financial institutions form the first layer of the international payment** wherein they hold accounts of other global banks who in turn hold accounts of the former. This enables the banks to send and receive payments from each other as they can simply debit their accounts and credit the other bank’s account with them and this in turn leads to payments flowing to the recipient bank that debit the sending bank and credit their account.

### ****The SWIFT Protocol****

However, it is not enough for banks and other financial institutions to simply transfer money to each other without having a common protocol and standard by which they can communicate with each other. In other words, they need to “talk to each other” in a “language” that is understood by them.

Hence, there is indeed a common protocol that forms the basis for such communication, this is the **SWIFT standard wherein the acronym stands for Society for Worldwide International Funds Transfer** wherein this payment standard prescribes the rules and regulations that all participants in the international payment network must abide with to ensure that there is a common standard of messaging and communication between the banks and other financial institutions.

For instance, the sender, the recipient, the intermediary, and the address and other details are to be captured in a specific format that is standard across banks so that each participant in the payment value chain knows exactly what is contained in the payment message.

### ****An Example of How International Payments Work****

To take an example, if you are located in the United States and want to send a funds transfer to India, you must first setup the beneficiary and then transfer funds from your account to the beneficiary. While this completes your end of the value chain, the next step is when your bank in the United States debits your account and credits its account with the funds. After this, it transfers the money to its partner bank in India or if it does not have any dealings with Indian banks, it contacts a bank in the United States that has such dealings and in both these cases; the funds are then transferred from the banks in the United States to the bank in India.

### ****Automation and Digitalization of the International Payment System****

As you can see from the above example, international payments involve a complex chain of transactions and payment routes that entail cooperation and coordination between multiple banks and financial institutions. All these flows are made possible by automated payment systems that use the SWIFT standard which as explained earlier enables and ensures that the payments flow smoothly throughout the value chain.

Further, in recent years, there has been so much automation and digitalization of the payment systems that funds from one country to the other are flowing in an almost real time manner with just minor delays because of the clearing houses in between.

Clearing houses are financial institutions such as the Reserve Bank of India in India and the United States Federal Reserve in the US which function as the node for the payments between domestic banks and international banks. Clearing houses are also places where traditionally there have been like the village markets where at the end of the day, the various merchants gather to settle their accounts and square the debts and the credits.

**The Role of International Chamber of Commerce in the development of Transnational Commercial Laws**

Based in Paris, France, the International Chamber of Commerce (ICC) is an organization comprised of more than six million members from countries around the world, tasked primarily with representing and helping to establish rules that affect and govern the interests of individuals and organizations in every part of private enterprise.

**The Basic Functions and Activities of the ICC**

In its capacity as the world’s foremost business organization, the International Chamber of Commerce functions in three primary capacities:

* As an advocate for policies that benefit members in every area of business
* The establishing of rules that help members achieve such policies and adhere to them
* Solving disputes between members

The companies and associations that make up or represent the ICC are all engaged in business activities of some sort, often with one another. For this reason, the ICC exerts overarching power when it comes to creating the rules and policies that govern how business transactions are completed as far as international business is concerned.

The rules are not mandatory, however, every member and all companies and organizations working with the ICC follow the existing rules, because they tend to represent the best possible outcomes for all involved parties. Many of the rules established by the ICC are incorporated into regular trading processes, including the trading done in the stock markets.

**Who the ICC Supports**

Ultimately, the International Chamber of Commerce supports its members and associates. However, in setting the groundwork for fair and profitable trade and business between nations, the ICC ends up supporting any firm that seeks out deals or trade with another country.

The ICC also works closely with a number of governmental agencies by lending expertise and establishing a presence through representatives at places like the World Trade Organization (WTO), the United Nations (UN), and even at the G20 summits.

The International Chamber of Commerce was created shortly after World War I when real regulation or security concerning international trade and business interests were not existent. Over the years, the ICC became a foundation on which rules of ethical and profitable trade between nations could be established. The rules the ICC laid down in its earliest years are the principles it stands on today, principles that influence almost every area of business and trade around the world.

**Dispute resolution services**

ICC’s administered dispute resolution services help solve difficulties in international business. ICC Arbitration is a private procedure that leads to a binding and enforceable decision.

The International Court of Arbitration of the International Chamber of Commerce steers ICC Arbitration and has received over 24,000 cases since its inception in 1923. Over the past decade, the court’s workload has considerably expanded.

The court’s membership has also grown and covers 85 countries and territories. With representatives in North America, Latin and Central America, Africa and the Middle East and Asia, the ICC Court has significantly increased its training activities on all continents and in all major languages used in international trade.

ICC Dispute Resolution Services exist in many forms:

* Arbitration is a flexible and efficient dispute resolution procedure leading to binding and final decisions subject to enforcement worldwide.
* Mediation is a flexible technique, conducted privately and confidentially, in which a neutral facilitator helps parties to seek a negotiated settlement of their dispute.
* Dispute boards are independent bodies designed to help resolve disagreements arising during the course of a contract.
* Expertise is a way of finding the right person to make an independent assessment on any subject relevant to business operations.
* DOCDEX provides expert decisions to resolve disputes related to documentary credits, collections and demand guarantees, incorporating ICC banking rules.

**ICC Commercial Crime Services**

ICC Commercial Crime Services (CCS) provides the world business community with a centralized commercial crime-fighting body. It draws on the worldwide resources of its members in the fight against commercial crime on many fronts.

From its base in London, and comprising three distinct bureaux, CCS operates according to two basic principles: to prevent commercial crime and to investigate and help prosecute criminals involved in commercial crime.

The specialized divisions of CCS are:

* International Maritime Bureau
* Financial Investigation Bureau
* Counterfeiting Intelligence Bureau
* FraudNet

**ICC Business World Trade Agenda**

The International Chamber of Commerce (ICC), in partnership with the Qatar Chamber, launched the ICC Business World Trade Agenda initiative in March 2012 to provide private sector leadership in shaping a new multilateral trade policy agenda. The aim of this initiative is ultimately to drive World Trade Organization (WTO) multilateral trade talks out of an 11-year deadlock and “beyond Doha”.

The World Trade Agenda is a strong business-led initiative to bolster rules-based trade. The WTO lends its support to this initiative by engaging business to provide recommendations to advance global trade negotiations.

The World Trade Agenda aims to:

* Define multilateral trade negotiation priorities for business
* Help governments set a trade policy agenda for the 21st century that contributes to economic growth and job creation
* Find answers to the current economic crisis and drive more effective trade talks
* Set concrete recommendations to advance global trade negotiations
* Sound the alarm on protectionism
* Gather input and validation from the global business community on trade agenda priorities and recommendations for achieving a Doha victory

Since its launch, the World Trade Agenda initiative has organized consultations with CEOs and senior executives in all major regions of the world to gather input and validation of its recommendations. These business priorities were released during the ICC World Trade Agenda Summit on 22 April 2013 in Doha.

The Agreement on Trade Facilitation was finally adopted at the WTO’s 9th Ministerial Conference on 7 December 2013. It was the first major agreement on trade facilitation to have been reached since the creation of the WTO.

**UNCITRAL Model law on International Commercial arbitration**

The UNCITRAL Model Law on International Commercial Arbitration was prepared by UNCITRAL, and adopted by the United Nations Commission on International Trade Law on 21 June 1985. In 2006 the model law was amended, it now includes more detailed provisions on interim measures.

The model law is not binding, but individual states may adopt the model law by incorporating it into their domestic law (as, for example, Australia did, in the International Arbitration Act 1974, as amended).

Note that there is a difference between the UNCITRAL Model Law on International Commercial Arbitration (1985) and the UNCITRAL Arbitration Rules. On its website, UNCITRAL explains the difference as follows: “The UNCITRAL Model Law provides a pattern that law-makers in national governments can adopt as part of their domestic legislation on arbitration. The UNCITRAL Arbitration Rules, on the other hand, are selected by parties either as part of their contract, or after a dispute arises, to govern the conduct of an arbitration intended to resolve a dispute or disputes between themselves. Put simply, the Model Law is directed at States, while the Arbitration Rules are directed at potential (or actual) parties to a dispute.

**The preamble to the Model Law provides:**

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

**(a)** Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

**(b)** Greater legal certainty for trade and investment;

**(c)** Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

**(d)** Protection and maximization of the value of the debtor’s assets; and

**(e)** Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

The Model Law is designed to provide a model framework to encourage cooperation and coordination between jurisdictions. Despite earlier proposals to do so, it does not attempt to unify substantive insolvency laws, and the Model Law respects the differences among the substantive and procedural laws of states.

The Model Law defines a cross-border insolvency is one where the insolvent debtor has assets in more than one state, or where some of the creditors of the debtor are not from the state where the insolvency proceeding is taking place.

UNCITRAL published the Model Law in response to concerns that the number of cross-border insolvency cases had increased significantly during the 1990s, but national and international legal regimes equipped to address the issues raised by those cases has not evolved at a similar pace. The absence of effective cross-border insolvency regimes was thought to have resulted in inadequate and uncoordinated approaches to cross-border insolvency which were both unpredictable and time-consuming in their application, lacking both transparency and the tools necessary to address the disparities between different national laws. As a result, it had become difficult to protect the residual value of the assets of financially troubled businesses, and impeded corporate rescue culture for cross-border entities.

**Indian Arbitration and Conciliation Act 1996**

The ‘Arbitration and Conciliation Act 1996’ is an Act that regulates domestic arbitration in India. It was amended in 2015 and further ammendment passed in Lok Sabha on 1 August 2019.

The Government of India decided to amend the Arbitration and Conciliation Act, 1996 by introducing the Arbitration and Conciliation (Amendment) Bill, 2015 in the Parliament. In an attempt to make arbitration a preferred mode of settlement of commercial disputes and making India a hub of international commercial arbitration, the President of India on 23 October 2015 promulgated an Ordinance (Arbitration and Conciliation (Amendment) Ordinance, 2015) amending the Arbitration and Conciliation Act, 1996. The Union Cabinet chaired by the Prime Minister, had given its approval for amendments to the Arbitration and Conciliation Bill, 2015

**Qualifications and Experience of Arbitrators**

A person will not be qualified to be an arbitrator unless he is/ has been:

(i) an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate

(ii) A chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of experience

(iii) A cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of experience

(iv) A company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of experience

(v) An officer of the Indian Legal Service

(vi) an officer with law degree having ten years of experience in the legal matters in the Government, autonomous body, public sector undertaking or at a senior level managerial position in private sector

(vii) an officer with engineering degree having ten years of experience as an engineer in the Government, autonomous body, public sector undertaking or at a senior level managerial position in the private sector or self-employed

(viii) an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a public sector undertaking or a Government company or a private company of repute

(ix) a person having educational qualification at degree level with ten years of experience in a scientific or technical stream in the fields of telecom, information technology, intellectual property rights or other specialized areas in the Government, autonomous body, public sector undertaking or a senior level managerial position in a private sector, as the case may be.

The Schedule also prescribes general norms applicable to arbitrators, including the following:

* The arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;
* The arbitrator must be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards, domestic and international legal system on arbitration and international best practices; and
* The arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.