

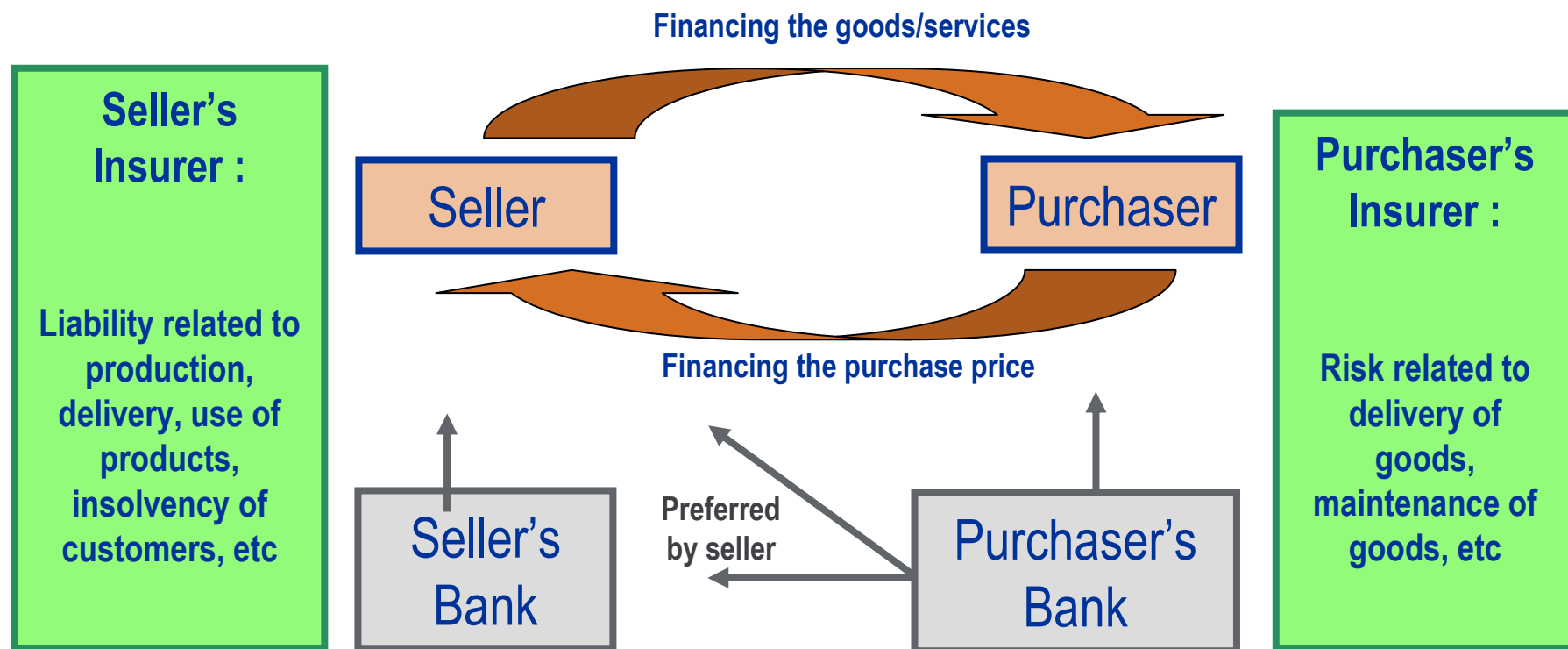
Commercial Trade

**A legal approach to optimizing the terms, financing
and enforcement for cash generation**

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*Britcham Seminar
23 June 2009*

Basic Rule : “See the Big Picture and Keep it Simple”



Three Main Areas to Focus On



Some Important Terms in the Contract to Focus On

- **Object of the sales contract**
 - **Product** : precise description of the product and packaging details
 - **Quantity**
 - **Price**
- **Payment of the price**
 - **Currency of payment** → think about (existing or new) hedging
 - **Time to pay the goods / services**
 - **Can payment be secured ?**
 - Retention of title for goods or rights
 - Other security interest / mechanism from the seller or its bank
- **Limitation of liability for the seller**
 - **Risk related to non-performance of the contract**
 - **Risk related to delivery of product and to the product itself**
 - **In line with the insurance policies in place**
- **Choice of law and jurisdiction in international trade**
 - **Fit with the transaction / quality / speed / costs / confidentiality**

How to Secure these Major Terms ?

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Good concept / strategy

Drafting good contracts

Security

**Discipline in daily practice:
pro-active and follow-up**

**Enforcement (depending on
future commercial relationship)**

Legal Support for Your Contract Documentation

- **Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions**
 - Scope: « *all payments made as remuneration for commercial transactions* »
 - Grants (i) a statutory right to interest 30 days after the invoice date and (ii) a right to claim full compensation for all relevant recovery costs incurred
 - Contracting parties are free to make different arrangements which will apply, unless these are deemed grossly unfair by a national court
 - Transposition in all MS, including Belgium: Belgian Law of 2 August 2002 on late payment transactions
 - New Commission proposal to strengthen this Directive (8 April 2009)
- **Regulation 805/2004/EC of 21 April 2004 creating a European Enforcement Order for uncontested claims**
 - Certification by means of a standard form – abolishes the exequatur
- **Regulation 1896/2006/EC of 12 December 2006 creating a European order for payment procedure**
 - First autonomous European procedure – alternative to national procedure
 - Scope: cross-border cases concerning uncontested pecuniary claims
 - Standard form to be used to apply for a European order for payment – abolishes the exequatur
 - Available from 2008 in all EU MS, except Denmark
- **Regulation 861/2007/EC of 11 July 2007 establishing a European small claims procedure**
 - Second autonomous European procedure
 - Scope: cross-border small claims = cases concerning amounts < EUR 2,000 (excluding interest, expenses and disbursements) at the date of receipt of the form
 - Standard European Claims form – the judgment will be automatically recognisable and enforceable in other MS
 - Available from 2009 in all EU MS, except Denmark

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