

商业法律英语的语言特点

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在我国对外经济活动中, 诸如涉外合同、协议及有关法规等各种英语的商业法律文件使用得极其广泛。它具有确定各方的权利、义务, 指导与调节对外经济交往的重要作用。由于它们是代表一定国家或组织机构而订立的具有特定约束力的文件, 为其所用的商业法律英语也就具有显著的特点: 规范庄重, 事理严谨, 客观准确; 但结构复杂, 词语陈旧冷僻, 不易看懂。掌握商业法律英语的特点和规律, 正确理解和运用这一语言, 对搞好对外经济活动具有重要意义。下面试就单词、词组和句法结构的主要特点和规律作一探讨。

一、单词、词组方面的特点

1. 在商业法律文件中, 很多单词、词组具有与其常用意义迥异的特殊含义, 如policy (保险单)、average(海损)、collection (托收)、sale by description (凭说明销售)、offer (报价)、action (诉讼)、consideration (对价)、damages (损害赔偿)、negotiation(议付)、draw on……(向某人支取)、in favour of (抬头人为)、negotiable instruments (流通票据)、documents against payment (付款交单)、without prejudice to (不损害某人权利为限)、joint and several liability(连带责任)等。因此, 在理解或运用时, 必须小心谨慎, 吃透含义, 切忌望文生义。

2. 在其它英语文体中不常用的一些词语, 在商业法律英语中为了精确说明却时有所见, 如deem(认为)、aforesaid(前述的)、forthwith(即刻)、witness(证明)、unto(直至)、in lieu of (替代)以及由“here, there, where十介词”构成的副词。它们连同另一些语意凝重的词语和表达方式, 给商业法律文件带来了一种庄重、严肃的感觉。例如:

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original,……

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective governments, have signed this Convention.

(一千九百八十年四月十一日订于维也纳, 正本一份, ……。下列全权代表, 经各自政府正式授权, 在本公约上签字, 以资证明。)

3. 由于商业法律英语历史悠久, 大量源于拉丁语和法语的词语沿用至今, 如 bona fides(善意)、prima facie(初步推定)、pro rata(按比例计算)、ad valorem(从价)、per (每)、pro forma(形式的)、circa(约)、ex aequo et bono(按公平合理的原则)、en route(在途中)、brochure(小册子)、force majeure(不可抗力)、chattel personal (动产)等; 另外, 还有一些由英、法、拉丁语的同义词构成的词组, 如acknowledge and confess (承认)、chattels and goods(货物)、act and deed (法律证书)、null and void (无效)等。

它们常常在意思上相互补充，表达一个完整精确的概念。例如：

A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(仲裁庭所作的关于合同无效的决定，并不使仲裁条款在法律上无效。)

4. 大量由“here, there, where + 介词”而构成的副词频频用以确切提及前述或后述的条款、文件、当事人等事项。它们还能使句子避免重复。常见的这类副词有：hereby (特此)、hereinafter (在下文)、hereinbefore (在上文)、hereof (在本文)、hereto (至此)、hereunder (在下面)、herewith (与此一道)、thereafter (此后)、thereby (由此)、therefrom (从那里)、thereof (其)、thereto (向那里)、whereat (在那里)、whereby (凭那个)、whereof (关于那个)、whereupon (因此)等。例如：

Cargo on deck, plants and live animals are received, handled, carried, kept and discharged at Shipper's or Receiver's risk and the Carrier shall not be liable for loss thereof (= of cargo on deck, plants and live animals) or damage thereto (= to cargo on deck, plants and live animals).

(舱面货、植物和牲畜在收受、搬运、运送、保管和卸载中所发生的风险由货主或收货人承担；承运人对其损失或损坏概不负责。)

5. 相当一部分由-or, -ee, non-, -able/ible, counter- 等词缀构成的单词广泛应用于商业法律文件，具有指称明确、稳定词义的独特作用，如 offeror, offeree (报盘人、受盘人)；payor, payee (付款人、收款人)；drawer, drawee (开票人、受票人)；licensor, licensee (许可人、被许可人)；consignor, consignee (寄售人、代售人)；promisor, promisee (立约人、受约人)；non-payment (不付款)、non-acceptance (拒绝承兑)、non-delivery (不交货)、non-observance (不履行)、non-negotiable (不可转让的)、non-tied (不附带条件的)、insurable (可保险的)、deliverable (可交付的)、payable (可付款)、assignable (可转让的)、enforceable (可强制执行的)、transmissible (可转让的)、divisible (可分割的)、counter-offer (还盘)、countersign (回答)、counter-claim (反诉)、countervailing (反补贴的)等。这样既丰富了商业法律英语的词汇，又无言不及义之虞。例如：

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror

(一项发盘，即使是不可撤销的，当拒绝通知送达发盘人时也就终止。)

6. 经常一起使用两个或两个以上的同义词来表达某一概念。它们在意思上相互补充彼此的不完全性，以避免误解，提高所表达概念的精确性，如 manufacture or production (制造或生产)、approval or acceptance (同意或接受)、revoke, countermand and make void (撤销、撤回和使其无效)等。但有些搭配却显得噜苏繁复，然而个别词语已成习惯用法，如 annul and set aside (= annul 撤销)、totally null and void (= void 无效)、absolute minimum (= minimum 最低限度)等。这些同义词在汉译时常可用一个相应的中文词语即能表达原旨。例如：

Granting and giving unto said attorney in fact authority and power to do and perform any and all other acts necessary or incident to the performance and execution of the powers herein expressly granted,...

(授予上述代理人以全部权力采取与本文明确授予行使权力有关的其它一切必要或有关的行动, ……)

7. 商业法律英语中还经常使用由“介词+名词+介词”构成的词组, 如 in accordance with (按照)、in witness of (证明)、in conjunction with (连同)、by virtue of (由于)、in receipt of (收到)、with regard to (关于)、in the light of (依据)、in the absence of (缺乏)、in the course of (在…过程中)、on the part of (在…一边)等。其作用同一般的介词。例如:

..., the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(……, 卖方在不损害其可能享有的其它权利的情况下, 可以依照他所知的买方要求, 自己订明规格。)

8. 商业法律英语还借助于限制性 (only, such, this, so, unless, otherwise, but, etc)、非限制性 (including but not limited to, nothing shall be deemed to, nothing contained herein shall, etc) 和表示绝对意义的词汇或词组 (any, all, always, none, absolute, never, whichever, whenever, in no case, in any event, etc), 根据客观需要对条文意思作出不同程度和范围的规定, 体现了高度的严密性和精确性。例如:

If any provision of this Bill of Lading be invalid under the Carriage of Goods by Sea Act 1936, such provision shall, to the extent of such invalidity, but no further, be null and void.

(倘若依据《1936年海上货物运输法》本提单项下有任何条款被视为无效, 这样的条款应在这一无效范围内作无效处理, 但不影响其它条款的有效性。)

9. 为力求指称明确, 商业法律英语往往不厌其烦地重复某一词语或词组, 从而大大减少了代词的使用。例如:

The Buyer is requested to sign and return one copy of this Sales Confirmation immediately after receipt of the same. Objection, if any, should be raised by the Buyer within five days after receipt of this Sales Confirmation, in the absence of which it is understood that the Buyer has accepted the terms and conditions of the Sales Confirmation.

(买方于收到本售货确认书后请立即回签一份。如买方对本确认书有异议, 应于收到后五天内提出, 否则, 认为买方已同意接受本确认书所规定的各项条款。)

二、句法结构方面的特点

1. 在商业法律英语中, 为了使意思表达严谨周密, 往往使用长句, 有的长达一个段落甚至几个段落。这类长句的结构通常是由简单的句型加上各种表示例外和限制等成分而构成的。例如:

If the credit calls for a combined transport document, i. e. one which provides for a combined transport by at least two different modes of transport, from a place at which the goods are taken in charge to a place designated for delivery,

or if the credit provides for a combined transport, but in either case does not specify the form of document required and/or the issuer of such document, banks will accept such document as tendered.

〔如信用证需要联合运输单据（即指使用至少两种不同运输方式自接管货物的地点运至指定交货地点的货运单据）或信用证规定联合运输，但在上述任何一种情况下均未指定所需单据形式及/或该项单据的开立人，银行当按照所提交的该项单据予以接受。〕

2. 在助动词或情态动词和实义动词之间常插入表示限制、例外和补充说明等成分。例如：

..., the policy must afford the holder thereof complete and continuous contractual protection against all those risks that are by the usage of the particular trade or on the contemplated route insured against at the time of the shipment of the goods or their delivery into the custody of the carrier, as the case may be.

（……，此项保险单，对于货物在装船或交给承运人保管时，按照特定行业惯例或在规定航线上应投保的一切风险，必须向保险单持有人提供完全和延续的合同保障。）

3. 在名词性短语中，各种修饰成分一般偏于后置。例如：

Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties.

（仲裁庭应将经仲裁员签名的终止仲裁程序命令的复制本或根据协议条件所作的仲裁裁决书的复制本送达当事人各方。）

4. 句子中宾语和状语成分往往很长，为了表达明确，通常将作为状语的介词短语提到宾语之前，使之紧跟及物动词。但有时即使状语和宾语都很短，也互为倒置。例如：

These Rules are intended to offer to those interested in the sale and purchase of goods on c. i. f. terms who have at present no standard form of contract or general conditions available a means of voluntarily and readily adopting in their c. i. f. contracts a set of uniform rules.

（本规则是为了对那些愿按 C. I. F. 条款进行货物买卖，但目前又缺乏标准合同格式或共同交易条件的人们提供一种方法，可在 C. I. F. 合同中根据意愿易于采取的一套统一规则。）

5. 长句中多使用各类并列结构，如宾语从句、定语从句、状语从句以及介词短语等并列成分，从而使句子显得规范工整，层次分明，条理清晰。例如：

The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

〔对在上一款所述时间后发生的由于卖方违反他的某项义务，（包括违反关于在一段时间内货物将继续适合于其通常使用的目的或某种特定目的，或将保持某种特定质量或性质的任何保证），所发生的任何不符合的情况，卖方均应负责。〕

6. 由于商业法律英语大多表达各方权利、义务等内容，所以绝大部分句式（一般陈述

句除外) 通常限于以下几类表示限制、假设、权利、义务等内容的基本句型及其变形:

- (1) If A, then B will be C. /Should A be B, C would be D.
- (2) Unless/Until A, B is (not) C. /A is (not) B until/unless C.
- (3) Nothing will be A until/unless B is C.
- (4) Where/when A, B will be C, etc.

e. g. where a credit calls for an attestation of certification of weight in the case of transport other than by sea, banks will accept a weight stamp or declaration of weight superimposed by the carrier on the shipping document unless the credit calls for a separate or independent certificate of weight.

(在采用海运以外的货运情况下, 信用证如需重量证明, 除信用证要求提交单独的或第三者开立的重量证明书外, 承运人加注于货运单据上的重量印戳或重量声明, 银行应予接受。)

7. 在商业法律英语中, 某些句子为了极其精确地表达一个概念因而忽视了句子的流畅性, 变得古怪拗口。例如:

In respect of clean collections partial payments may be accepted if and to the extent to which and on the conditions on which partial payments are authorized by the law in force in the place of payment.

(关于光票托收部分付款, 仅在付款地现行法律准许部分付款的限度和条件下, 才可以接受。)

