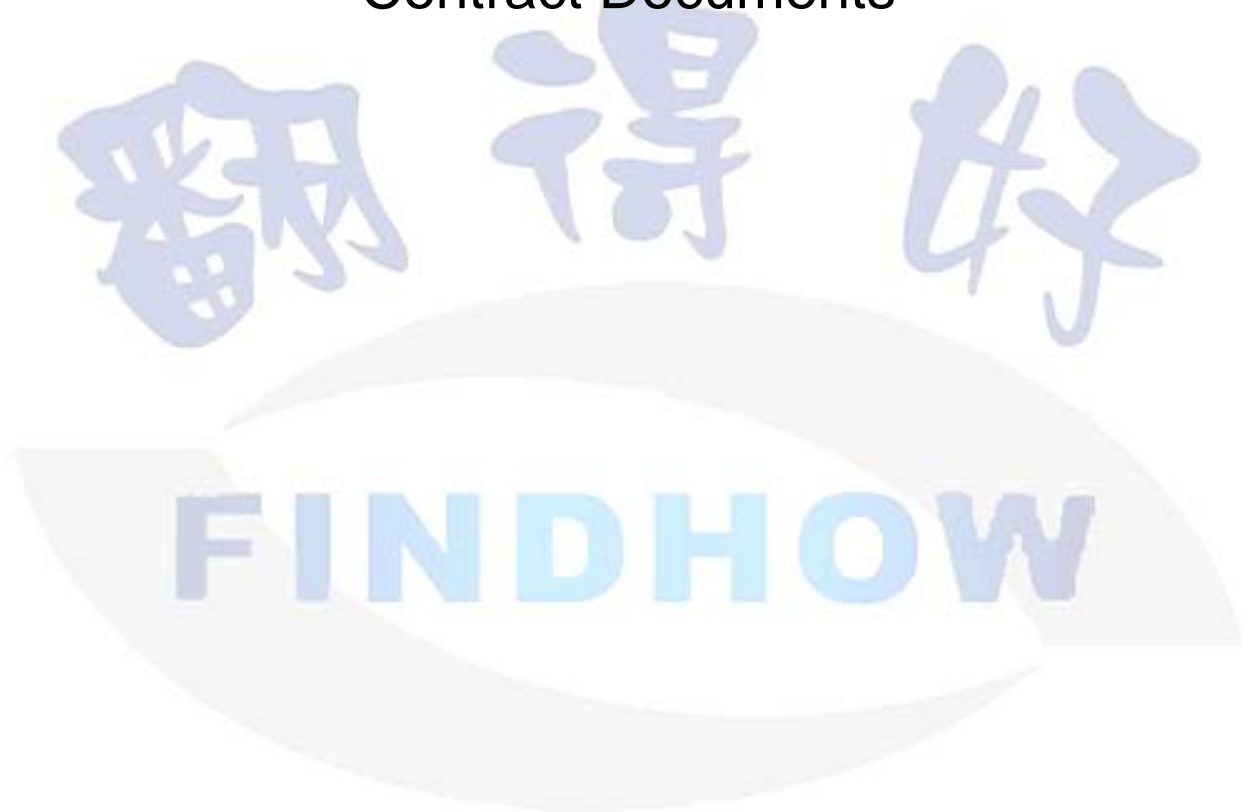


合同法律文件翻譯談

Talk on Translation of Legal Documents and
Contract Documents



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合同法律文件翻译谈---谈《中华人民共和国合同法》的部分译文

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摘要：随着我国加入世贸组织，对法律文件翻译的研究，比如经济法规、合同文件的翻译研究，将成为我们翻译工作者的一个重要课题。本文在总结以往的经验基础上，探讨了翻译法律文件，应注意的语言特点。本文还对合同法中译英的不同译法作了较详细的解评，提出了法律文件中译英的一些实用的翻译技巧。

关键词：法律文件；专业词汇；句子结构

**Talk on Translation of Legal Documents and Contract Documents ----
Commenting on Parts of English Version of the translation of the Contract Law of People's Republic of
China**

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Abstract: After China 's entry into WTO, the study of translation of legal documents, such as the translation of economic laws, regulations and rules, and contract documents, will surely become a important research topic for translators. This article discusses sufficiently, on the basis of past experience, some language characteristics in the translation of legal documents, which shall be paid attention to. The article also provides detailed comments on the different English versions of translating the Contract Law to show some practical skills of translation of legal documents.

Key words: legal documents; legal terminology; language structure;

改革开放的深化，世贸组织的加入，中国在国际经济活动中越来越活跃，生意越做越大，交往愈加频繁，国际间的一切经济活动都离不开互相依赖、互相制约的合同，都离不开法律条文的监管。因此翻译合同等法律文件已成为当前研究的一门课题，笔者在这方面的研究已逾十多年，想就法律文件的翻译谈些心得。

一. 翻译合同法的用词特点

合同法的语言，自成体系，具有自己个性与特点，语言要求准确、正规、鲜明，有自身一套用词路数及专业用语，使行文简洁明确。

1. 以 **here, where** 作前缀与另一个词构成一个正式法律词汇中的专业副词术语 如: hereafter, hereby, herein, hereinafter, hereinbefore, hereof, hereto, hereunder, hereupon, herewith, thereafter, thereby, therefrom,

therein, thereafter, thereinbefore, thereon, thereof, thereupon, therewith;

whereas, whereby, wherein, whereon, etc.

在法律文件中用这些词、可以避免重复，使行文准确、简洁、不会产生歧义，从而维护了法律的权威性，因些 在把中文的合同法条款译成英文时，要学会运用这些词，使译文具有法律文件的水平。下面从《中华人民共和国合同法》，以下简称《合同法》，的译文中举出一些具体的实例（译文①与译文②进行对照评解）来说明如何在译文中使用这些词（注：译文②为笔者所译）。

第五条 当事人应当遵循公平原则确定各方的权利和义务。

译文①: Parties shall adhere to the principle of fairness in designating each party's rights and obligations.

评:

- ★ 法律条文中很少有 party's 这种所有格形式来表示。
- ★ each party 所指是谁而且条文一开始的 parties 也不明确。

可改为:

译文②: The parties to the contract shall comply with the principle of fairness in defining the rights and obligations of the parties thereto.

评:

★ 译文中的 thereto 限制了 parties，指的是 the parties to the contract，也就是用一个 thereto 代替了文中的 3 个“to the contract,”使行文简洁、明了、准确。

★ 译文②中的用词 defining 比译文①中的 designating 确切。Define = to determine or identify the essential qualities; to fix or mark the limits of sth; to make distinct; clear or detailed 之意，designate: to point out the location, to indicate and set apart for a specific purpose. 不如 define 在表达“确定”的内在含义上更贴切。

第六条 当事人行使权利、履行义务应当遵循诚实信用的原则。

译文①: Parties shall adhere to the principle of honesty and trust worthiness in exercising their rights and performing their obligations.

评:

★ 译文中两次用 their，这种情况在法律语言中是极少的，法律语言中避免用不确定的代词。所以应该删去 their，以 thereof 来限定为合同规定的权利和义务。修改见译文②。

译文②: The parties to the contract shall, in accordance with the principle of good faith, execute the rights

and perform the obligations thereof.

评:

★ thereof 代替 of the contract, 使意思表达明确。又如, 要表达前文提及过的合同的“合同条件、条款”时, 可以译为“the terms, conditions and provisions thereof”。

第 61 条 合同生效后, 当事人就质量、价款或者报酬、履行地点等内容没有约定或者约定不明确的, 可以协议补充;

译文①: After a contract goes into effect, the parties may reach a supplementary agreement on items that have not been included or are not explicitly stipulated in the contract, such as quality, price or remuneration, place for performance and other matters;.....

评:

★ a supplementary agreement: 意思不明.....that have not been included 虽是限制性定语从句, 仍未说明包含在什么之中?

★ Such as 又显得无处着落, 句子结构不严密。英文的含义与原文出入很大。

译文②: If, after the contract made by and between the parties becomes effective, there is no agreement therein on the terms and provisions regarding quality, price or remuneration and place of performance, etc. or such agreement is unclear, the parties may, through consultation, agree upon supplementary terms and provisions;

评:

★ 译文②把中文条款进行“语内译”, 会发现中文条款暗含个条件句, 即, 如果.....可以.....所以用 if 条件比用译文①中的 that 定语从句要明确得多。

★ 用 agreement therein 把 agreement 说得非常清楚, 指 agreement in the contract.

★ therein: in that; in that particular context; in that respect 之意, 表示在上文已提及的, 比如表示“合同(中)的....., 工程(中)的.....”时, 可以用此词。又如, 表示“修补工程中的缺陷”可以译为“the remedying of any defects therein”, 此中的 therein 即 “in the Works”, 又如“用于工程中的材料或机械设备”可译为“materials or plant for incorporation therein”此时的 therein 乃是 “in the Works”。本条款中的 therein 指的是 “in the contract made by and between.....”

第 96 条 对方有异议的, 可以请求人民法院或者仲裁机构确认解除合同的效力。

法律、行政法规规定解除合同应当办理批准、登记等手续的, 依照其规定。

译文①: If the other party has objections, it may request a people's court or an arbitration

organization to confirm the rescission.

If the rescission of a contract is required to go through approval and registration procedures according to the provisions of laws or administrative regulations, the relevant party shall act accordingly.

评:

★ the other party has objections 反对的对象不清楚，后面应该加 thereto,即 objection to the fact that the contract shall be rescinded (在上文中) 这回事。

★ it may request....., 合同法律文件中很少用代词 it 来代表某一方，应该用 the party in question 来限定，使之不发生歧义或误解。In question; under consideration; being talked about, 此词组表示“在考虑中或在议论中”的某事或某问题，有强调限制作用，可译为“这”“该”如“该工程”可译为“the Works in question” 常用于合同法律文件中。

★ a people's court 不合适，人民法院已成为专有名词，the people's court.

★ to confirm the rescission 欠译。可改为 to confirm the rescission of the contract.

★ if the rescission of a contract is required.....中的 If 表示如果，假设的情况。中文的含义是比较确定的，不宜用 if.

★ The relevant party 所指是谁？不明确。原文就没有执行的主语，最好用被动语态来处理。

★ act accordingly 语言欠正规、确切。

译文②:If the other party disagrees therewith, the party in question may request the people's court or an arbitration institution to confirm rescission of the effectiveness of the contract.

Where the laws or administrative regulations specify that the rescission of a contract shall go through the formalities of approval and registration, the provisions thereof shall be complied with.

评:

★ therewith: with that 与此，与之。即 disagrees with the fact that the contract shall be rescinded.

★ Where: 比 If 肯定，表示处在某种情况下，环境中，法律中常用。

★ thereof 在前面已谈到，指 provisions of the laws or administrative regulations, 用此词组比译文①简洁、鲜明。

★ shall be complied with 正规的法律语言。

第 377 条 保管期间届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

译文①: If the safekeeping duration expires or the depositor wants to obtain the deposited goods, the

safekeeping party shall return the original goods and their interest to the depositor.

评:

★ wants to obtain.....与原文意思有出入，“提前”未译，“领取”之意也未译出。

★ goods 指货物，原文中是保管物，未指明是货物，有出入。

★ and there interest: there 所指不明（法律文件中少用）。Interest 来自何处不清。“孳”的词义未译出。

译文②: If the safekeeping duration expires or the depositor claims and retrieves the article before the expiry date, the safekeeping party shall return to the depositor the original article and the interest generated therefrom.

评:

★ claims and retrieves: 系同义词连用，取两个字的相同的词义，因为 claim 除了索取，取回外，还有索赔之意，retrieves 除有领取、领回外还有失了复得，找回，检回之意，两个连用，只取两词义相同的部分：即取回，领取，这样避免产生歧义。

★ article 比 goods 准确，贴切。

★ therefrom 就很好的监管了 interest 这个词，把孳息的来源说清楚了，即 from the article.

★ generated 这个词很好地表达了孳息，即息生息，不断滚动的利息。

第 396 条 委托合同是委托人和受托人约定，由受托人处理委托人事务的合同。

译文①: A commission contract is a contract between the commissioning party and the commissioned party, under which the commissioned party handles businesses for the commissioning party.

评:

★ businesses:复数形式只作买卖、店铺、商号解。作事务、职责、任务解是不可数的，所以应用 business.

★ under which..... which 所指何物？不清楚，容易产生歧意、产生误解

★ business 很少与 for 短语连用

译文②: A commission contract refers to a contract between the commissioning party and the commissioned party whereby the commissioned party shall handle the business of the commissioning party.

评;

★ 对原中文条款进行“语内译”可以理顺中文的条款的内含，即委托人和受托人签订的是委托合同，

凭借这个合同，委托人的事务由受托人处理。这样用 *whereby* 就可以简便而准确地把句子的前后部分连接在一起。

★ *whereby*: by the agreement; by the contract; by the following terms and conditions etc. 凭此协议，凭此条款等等，此词常用于合同协议书中，引出合同当事人应承担的主要合同义务。

为了加深对这些词的认识，再从 FIDIC 条款中选择几句英文原文作英译中练习。可与中译英作一对照。

例 1:

We hereby certify to the best of our knowledge the foregoing statement is true and correct and all available information and data have been supplied herein, and that we agree to provide documentary proof upon your request.

文中:

★ *hereby*: by means of, by reason of this, 特此，因此，兹等意，常用于法律文件、合同、协议书等正式文件的开头语；在条款中需要强调时也可以用。上文中 *hereby*: 特此之意。

★ 另有些专业用语也一并作些解释。如: *to the best of our knowledge*: as far as we know。

★ *foregoing statement*: above-mentioned statement 上述声明。

★ *herein* 这也是法律文件中常用的字: *in this, in the statement*。

★ *documentary proof*: 证明文件。

参考译文: 兹证明, 据我们所知, 上述声明内容真实, 正确无误, 并提供了全部现有的资料和数据, 因此我们同意应贵方要求出具证明文件。

例 2:

This Law is hereby formulated and prepared in order to develop the foreign trade, maintain the foreign trade order and promote the healthy development of the socialist market economy.

Foreign trade mentioned herein shall cover the import and export of goods, technology and the international trade in services.

文中:

★ *This Law is hereby formulated and prepared*: 意为“兹制定本法……”

★ *maintain the foreign trade order* 维护对外贸易秩序

★ *promote the healthy development of the socialist market economy* 促进社会主义市场经济的健康发展

★ Foreign trade mentioned herein 本法所称对外贸易

★ herein: 作 in this Law 解

★ the international trade in services 国际服务贸易

参考译文:

为了发展对外贸易, 维护对外贸易秩序, 促进社会主义市场经济的健康发展, 兹制订本法。

本法所称对外贸易, 是指货物进出口、技术进出口和国际服务贸易。

例 3:

A sales contract refers to a contract whereby the seller transfers the ownership of an object to the buyer and the buyer pays the price for the object.

文中:

★ sale contract: 买卖合同

★ the seller: 出卖人, 注: seller 在法律中称为出卖人, 在合同中称为卖方; 同样 Buyer 在法律中称为买受人, 而在合同中称为买方。

★ object: 标的物, 即买卖合同中出售的货物。

译文译文:

买卖合同是出卖人转让标的物的所有权于买受人, 买受人支付价款的合同。

2. 关于 shall 的用法

在合同等法律文件中, 表示强制性承担责任、履行义务, 即中文中常用的“应该”, “必须”等字眼时, 翻译时应该用 shall, 而不能用“must”或“should”. 有时可以用 will, 但力度不如 shall 强。

Should 在法律文件中往往取代 if, 放在句首, 表示“如果”之意。举一两个例子说明:

例 1:

This company shall be a Chinese legal person. All activities hereof shall be governed and protected by the Laws and relevant rules and regulations of People's Republic of China .

文中:

★ Legal person: 法人

★ All activities hereof: All activities of this company 公司的一切活动

参考译文:

本公司应为中国法人。公司的一切活动应受中华人民共和国法律和法规的管辖和保护。

例 2:

All disputes arising from the performance of this contract **shall**, through amicable negotiations, be settled by the Parties hereto. Should, through negotiations, no settlement be reached, the case in question **shall** then be submitted for arbitration to the China International Economic and Trade Arbitration Commission, Beijing and the arbitration rules of this Commission **shall** be applied.

文中：

- ★ 3 个 shall 都表示应履行的责任。
- ★ Should 引导假设条件句，代替 if，倒装句型。
- ★ amicable negotiation: 友好协商。
- ★ the performance of this Contract 履行本合同。
- ★ the Parties hereto: the Parties to this Contract 本合同双方。
- ★ shall then be submitted for arbitration 然后应提交仲裁。
- ★ the China International Economic and Trade Arbitration Commission, Beijing: 中国国际经济贸易仲裁委员会（北京）

参考译文：

对于因履行本合同所发生的一切争议，本合同双方应友好协商解决。如协商仍无法解决争议，则将争议提交中国国际经济贸易仲裁委员会（北京），依据仲裁规则仲裁。

3. 用词的专业性

对外经济合同等法律性文件要求使用书面的正规用语，以维护法律文件的尊严及权威性。常用的专业词汇有: in accordance with, unless otherwise, provided that, be deemed to, in question, in case, be liable for, be liable to, in respect of, in the event that, in (the) case ,etc. 此外还常用些大词，法律正式用词等等。中文条款译成英文条款时，不运用或不会运用专业词汇，译文就显不出其法律的权威性，只能算作普通译文，不能称作法律条文，也就是说失去了法律条文的风格。下面仍以评解的方法予以阐述：

第 4 条 当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

译文①: Parties shall enjoy the right to sign contracts on their own according to law, and no unit or individual shall interfere illegally unless legally authorized to do so.

评：

- ★ enjoy: to have for one's use, benefit, to take pleasure 之意带有感情色彩，非正式用词。
- ★ to sign contracts; sign: to place a sign to, to engage or hire 签字，签名。这是按照中文“签合同”译来的。签订合同的动词可以单独用 conclude or enter into (a contract),或者由下列几个动词的任意两个的

组合，即同义词连用：sign, conclude, make, enter into (a contract), 单独用 sign contract 是不能表达签订合同之意。

★ unless legally authorized to do so: 属于加意，原文并无此意。

★ according to: 非法律用语，应该正式用语 in accordance with

译文②: The parties shall, in accordance with the law, have the right to voluntarily conclude and enter into a contract. No unit or individual shall illegally interfere.

评:

★ 译文②避免了译文①中的问题。

第 8 条 依法成立的合同，对当事人具有法律约束力。当事人应当按照约定履行自己的义务，不得擅自变更或者解除合同。

依法成立的合同，受法律保护。

译文①: A contract concluded according to law shall be legally binding on the parties concerned. The parties shall perform the obligations stipulated in the contract. No party may unilaterally modify or rescind the contract.

Contracts concluded legally are protected by law.

评:

★ according to law: 非法律用语，law 应加定冠词，依法成立的，这个法不是任何法，而是相关的法律。

★ The parties: 是指签订合同的双方，所以应有所交待，有所限制，可用 thereto 限定，即: parties to the contract

★ “应当按照约定”要进行“语内译”即按照所制定的合同的条款条件、规定的内容履行义务，而不是约定这个动作，行为。译文中用 stipulated 分词来修饰 contract，不是法律正式用词。即使表示“约定”行为也应该用 provide, specify 等字。

★ No party may.....应该用 neither party,指合同双方的任何一方，而不是泛指某一个参与者。

★ 译文中漏译“自己的”义务，“自己的”，经“语内译”应理解为“各自的”，

contracts concluded legally are protected by law.这句译文中的 contracts 应有定冠词限定。用 legally 来表明是依法成立的合同，使句子含糊不清，因为这个副词既可以认为是用来修饰 concluded，也可以被误认为是用来修饰 are protected 最好排除发生歧义的可能性。

译文②: If, in accordance with the law, a contract is made and concluded, the contract in question shall

legally be binding on the parties thereto. The parties thereto shall, in accordance with the terms, conditions and provisions of the contract, perform their respective obligations. Neither party shall unilaterally modify or rescind the contract.

The contract concluded and entered into under the law shall be protected by the law.

评:

- ★ 以 if 从句译出暗含的条件从句，处理句子结构清晰。
- ★ 用 made and concluded 同义词连用，使 contract 鲜明
- ★ 以 in question 和 thereto 作明确限定，不会产生歧义或争端
- ★ 以 respective 明确各自的责任
- ★ 以 under the law 短语表明按照法律，十分明确，under 在法律条款里是正规用字，有根据，按照，依照之意。

第 14 条 要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：

- 一. 内容具体确定；
- 二. 表明经受要约人承诺，要约人即受该意思表示约束。

译文①: Here offer means that one party expresses its wish to enter into a contract with the other party, and the wish expressed should include the following provisions:

- (1) The concrete contents are designated; and
- (2) Once the offeree accepts the offer, the offerer shall be bound by the offer.

评:

- ★ 法律条文中尽量避免用代词，第一句中 one party...its 都不恰当，不明确，最好想法避免。
- ★ here offer means.....的句式非法律语言
- ★ wish 只是心中的愿望，与中文的“意思表示”尚有差异“the wish expressed”译为该意思表示也不确切。
- ★ should 为非正式用语，应改为 shall。
- ★ include 是包含，包括在内之意，而不是符合某种规定之意，中文的“符合下列规定”的内语译应是“遵守、遵循下列规定”之意，而不是包含之意。

★ The concrete contents 只译出了中文的字面意思，所谓“内容具体确定”，经过语内译应理解为内容详细、全面、明确，受要约人通过要约不但明白要约人的真实意愿，而且还知道可能所要订立的合同的一些主要条款。这里的“确定”讲的是要约内容确定，而不是动作概念，所以译成“具体的内容被确定”

与条款不符。

★ Once 不如 in case 正式

译文②: An offer refers to a proposal to make and enter into a contract with other parties. The proposal in question shall comply with the following provisions:

(1) The contents thereof shall be detailed and definite;

(2) The proposal in question shall indicate that the offeror shall be bound by the offer in question in case the offer is accepted by the offeree thereto.

评:

★ 译文②用字明确, 结构清楚, 避免发生歧义。

第 15 条 要约邀请是希望他人向自己发出要约的意思表示。寄送的价目表、拍卖公告、招标公告、招股说明书、商业广告等为要约邀请。

商业广告的内容符合要约规定的, 视为要约。

注: 要约邀请又称为要约引诱, 是希望他人向自己发出要约的表示, 是当事人订立合同的预备行为, 行为人在法律上不承担责任。

译文①: An offer invitation means that one party invites other parties to issue offers to it. An offer invitation includes, mailed or delivered by other means, price lists, auction announcements, tendering notices, the directions for raising capital by floating shares and commercial advertisements.

Commercial advertisements whose content are in conformity with the provisions of offers shall be regarded as offers.

评:

★ one party 在法律语言中不适用, 要尽量避免用。

★ 用动词 invite 动作概念太强, 产生一方要请另一方来发出要约的歧义。

★ to issue offers to it, issue 有发表, 公布之意, 易产生歧义, 而且 it 意思不明确。

★ An offer invitation includes....., 让人认为一份要约包括下列那些内容, 这就错了. 原文意思是(进行语内译的话).....的内容都称为要约。

有必要先解释一下这几个名词:

★ 寄送价目表: 是指寄出印有商品价格的文件. 其目的是希望收到价目表的人, 向自己发出订立合同的要约并提出订立合同的条件. 价目表的寄送行为只是一种要约邀请, 而不是要约。

★ 拍卖公告: 指拍卖人向竞买人发出的要求对方报价的文件, 该文件记载着拍卖标的物的名称、质

量、数量、拍卖场所，拍卖日期等项目，因公布对象不定，不具备合同内容，所以只能称为要约邀请，不能称为要约。

★ 招股说明又称招股章程，是表达募集股份的意思，并载有某些信息的文件，是要约邀请。

★ 商业广告，大家都熟悉，也是一种要约邀请。

★ whose content.....可用于普通描述，不可用于条款。

译文②: An invitation for offer refers to a proposal for requesting other parties to make offers to the principal. Price forms mailed or send, public notices of auction and tender, prospectuses and commercial advertisements, etc. shall be deemed to be an invitation for an offer.

Where the contents of a commercial advertisement comply with the terms and provisions of the offer, the advertisement in question shall be deemed to be an offer.

评:

★ invitation 用的是派生名词，抽象性强一些，invitation for offer: 要约邀请

★ to the principal: 指寄送要约邀请的人

★ be deemed to (be/do): 被认为，法律文件中的正式用语，比“be believed, be considered”正式

★ where 在文件中，常常不是指地方，不是引出地点状语从句，而是比 if 肯定的条件句，实际上是强调如果在某种情况时，表示处在.....情况下，环境中，条件下.....等。

由于受限于篇幅，只能挂一漏万，余者日后有机会再探讨。

4. 动词的准确性

合同法律语言为维护其准确性、权威性，在用词上除一些专业术语、专业词汇外，还要求在遣词造句时应十分准确；为排除英语词汇常常有一词多义易发生歧义的问题，常采取同义词连用，取两个词或多个词的共义来限定其唯一词义；排除产生歧义的另一途径是尽可能少用代词，这些都是避免合同双方发生误解、矛盾、争论而逐渐形成的法律语言有别于其他语言的个性和风格。

第 12 条 合同的内容由当事人约定，一般包括以下条款：

(一) 当事人的名称或者姓名和住址；

(二) 标的；

.....

(八) 解决争议的方法。

当事人可以参照各类合同的示范文本订立合同。

译文①: The contents of a contract shall be decided by the parties concerned. In general, a contract shall

contain the following items:

(1) The titles or names of the parties concerned, and their addresses;

(2) Object;

.....

(8) Methods of solving disputes.

The parties may sign a contract with reference to model copies of various kinds of contracts.

评:

★由当事人“约定”用 decide 不够确切。这里的“约定”是指经过协商达成一致意见的意思，可以用 agree (upon)

★ by the parties concerned 非法律语言,concerned 可改为 thereto

★ a contract shall contain thecontain 有包含，由.....组成，等于，相当于，等多义

★ their addresses, “their”代词所有格最好免用，addresses 太一般化，不用于合同，可以用 domicile 住处，指户籍，法律上长住处。

★ object 可改为 contract object,较明确，指合同要处理的问题

★ solving disputes, solve 不如 settle 正规、贴切

`Solve: to find a solution, explanation or an answer a problem 之意

Settle: to conclude(a law suit) by agreement between parties. 多用于法律上解决纠纷、矛盾。

★ sign a contract 在前面已经提过，sign 单独不能视为签合同，应于 make 或 enter into 或 conclude 连用。

★ with referencewith 易发生歧义，常首先理解为“与.....签合同

★ model copies 应改为 model text 示范文本。

★ of various kinds, 文中的“参照各类合同示范文本”应进行语内译，指的是订哪种合同参照哪一种示范文本，因针对各种不同类型的人订合同而言，要参照各类不同的合同示范文本，所以用 various 不确切，订个合同要把各种不相干的文本都参遍也不可能，译为 of each kind of..... 比较贴切。

译文②:

The contents of a contract shall be agreed upon by the parties thereto, and shall, in general, cover and include the following clauses:

(1) title or name and domicile of the parties thereto;

(2) contract object;

.....

(8) methods to settle disputes,

The parties may, by reference to the model text of each kind of contract, conclude and enter into a contract.

评:

★ cover and include 用同义词连用的方法，解除一词多义产生的歧义。

★ by reference.....以 by 短语表明方式，手段

第 10 条：当事人订立合同，有书面形式、口头形式和其他形式。

译文①：Contracts shall include written, oral and other forms.

评:

★ 将原文进行“语内译”便可以明白，当事人签订合同时可采取.....形式，译文的含义与此有些出入，可反译为合同应该包括.....形式，似乎给人感觉每份合同需要这三种形式，容易产生歧义。

译文②：The parties may conclude and enter into a contract in written, or oral or other forms.

评:

★ 这就明确地表明，签订一份合同，可以采用其中一种形式。本款下文也有类似表述不清的问题，不一一细说了。

第 20 条 有下列情形之一的，要约失效：

- (一) 拒绝要约的通知到达要约人；
- (二) 要约人依法撤销要约；
- (三) 承诺期限届满，受要约人未作出承诺；
- (四) 受要约人对要约的内容作出实质性的变更。

译文①：In any of the following situations, the offer shall cease to be effective:

- (1) A notice of refusal of the offer has been received by the offer;
- (2) The offerer has concluded the offer legally;
- (3) The offeree has not made commitment at the time of the expiration of the commitment term; or
- (4) The offeree has made substantive changes to the offer's contents.

评:

★ situations:有 5 个义释，只有第 5 义与原文中情形含义相近，发生歧义的可能较大，不如用 circumstance 其中 4 个义释相近。

★ “失效”以 shall cease to be effective 合同中没有这种译法，可用专业强的词：null and void同义词连用，避免歧义。具有依照法律规定不再生效之意。

★ a notice of refusal of the offer“拒绝要约的通知”中拒绝应该用 rejection 拒收之意

★ “到达要约人”用“receive”来译欠妥，因为 reach 与 receive 含义有别。

★ has canceled the offer legally, cancel 是划去，取消之意，非正规用词；legally 是合法地，并非是依法去做.....

★ has not made 译为 has failed to make.....较好，较为正式。

★ “变更”用 alter,用 change 事指外观上的变化，如撤换，对换，兑换等，易产生歧义。Alter: to become different, to make different without changing into something else.

译文②： An offer shall be null and void in the case of the following circumstances:

- (1) The notice of rejection of the offer has reached the offeror;
- (2) The offeror has revoked the offer in question in accordance with the law;
- (3) The offeree has failed to make an acceptance by the expiration of acceptance;
- (4) The offeree substantially alters the contents of the offer in question.

第 24 条 要约以信件或者电报作出的,承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的,自投信件的邮戳日期开始计算。要约以电话、传真等快速通讯方式作出的,承诺期限自要约到达要约人时开始计算。

译文①： If an offer is made by letter or telegram, the commitment time limit shall be calculated from the date on the letter or the day when the telegram is sent. If there is no date on the letter, the postmark date shall be regarded as the starting date. If an offer is made by telephone, fax or other quick forms of communication, the time limit for commitment shall be counted from the day when the offer reaches the offeree.

评：

★ If an offer is made by letter or telegram.....易发生歧义，by 短语容易被理解为动作执行者。

★time limit shall be calculated from....., **calculated limit** 动宾搭配不太合理。这里要进行“语内译”，原文“开设计算”指的是承诺期限的启动时间，而不是真的要你去计算这个期限。中译英在许多时候要作“语内译”，弄明白中文字面的深层含义，而不是字面的对译。比如中文的一个口语“真烦人”，在不同的语境，可以有若干不同的译法。

★ the date on the letter 容易误解，不严谨，是规定日期，书写日期，还是邮戳日期，还是别的什么日期。

★ if there is no date on the letter 同样是含糊不清。

★ the postmark date shall be regarded as.....不严谨，一般信封上有两个邮戳，投寄方邮戳和收邮方邮戳，孰为准？

★ if an offer is made by telephone, fax.....表达不严谨，与原文也有出入，原文是“以.....方式作出的”，译文易被误解为 offer 的執行者是电报、电传.....。

★ shall be counted from the day when.....欠准确、严谨，原文中的“.....时开始计算”，这里的计算依然不是 count 的含义，而是指起点时间。“day”的时间幅度太大，因为这里快速通讯方式，用“day”不精确。

译文②： When an offer is made in the form of a letter or a telegram, the time limit for acceptance shall commence from the date stated in the letter or from the date the telegram is handed in for dispatch. If no such date is stated in the letter, the time limit shall commence from the date in the sending postmark on the envelope. Where the offer is made by means of instantaneous communication, such as telephone or FAX, the time limit for acceptance shall commence from the moment that the offer reaches the offeree.

评：

★ commence: to make or to have a beginning, be more formal or bookish than begin. 所以用这个字准确地表达了起始时间。

★ stated 表示了信上明确申诉的时间。

★ Where 前面已作解释，是比 if 更肯定的场合。

★ 行文结构清楚，用词严谨。

第 29 条 受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但因其他原因承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺的以外，该承诺有效。

译文①： If, within the time limit, an offeree issues a commitment which should be received by the offerer under normal conditions, but the commitment is received by the offerer after commitment time limit due to unforeseen circumstances, the commitment shall still be valid, unless the offeree informs the offerer in time that he or she does not accept the commitment because the time limit has been expired.

评：

★ within the time limit 欠译。其后应加“ for acceptance” 表明是在承诺期限内。

★ receive 可改为 reach，前面已作过解释。

★ but the commitment, 原文字面上意思是转折, 实际上是在合同里, 对可能发生的情况作进一步规定, 所以用 but 不合适, 应该用 provided that if.....但规定, 规定。此词组常用于在合同的某一条款中需要作进一步规定时, 而语气稍有转折时用。中译时要注意该词的使用, 有时字面上没有“但规定”、“进一步规定”的字样, 但有其内含时, 要能正确应用。

★ received by the offerer after the commitment time limit....., received 改为 reached。

★ after the time limit 用词不严谨, 因为 after 以后的时间幅度很大, 而且与原文含义不符, 原文时超过承诺期限, 而不是在承诺期之后。

★ still 不如改为 remain, 有保留的含义。

★ That he or she 代词不明确, 避免使用, 文中有两个单数人物, 指哪位呢? 易产生歧义。

★ does not accept 是指“没有接受”这个客观行为, 原文中的不接受具有拒不接受之意。

★ has been expired 已期满之意, 而不是超过期限。

译文②: When, within the time limit for acceptance, the offeree dispatches the acceptance, the acceptance will, in normal circumstances, reach the offeror in due time. Provided that if the acceptance reaches the offeror beyond the time limit because of other reasons, the acceptance shall remain effective, except that, the offeror promptly informs to accept the acceptance because the time limit for acceptance has exceeded.

评:

★ 译文②避免了译文①中的问题。

因《合同法》文件有四百多条, 不能一一细说, 只能以一斑见全豹来研究这个问题。下面要谈谈合同文件的另一大特点, 句子结构。

二. 合同翻译中句构特点:

国际经济合同文件及其他法律文件的英文句构具有周密严谨、句式较长等特点, 这主要因为法律条理性、周密性所决定的, 每一种情况或条件、或要求、或断定都要顾及到种种可能发生的情况, 种种设定, 种种意外, 种种解决办法, 一个句子常常要包罗千变万化的情况, 自然成长。长句排列组织不好, 就容易引起混乱、误解、歧义, 于是法律文件的句构十分讲究, 具有长而不乱, 各居其位, 周到严密等特点, 使法律语言自成体系, 个性鲜明。鉴于这一点, 将中文合同文本, 译成英文条款时, 当尽可能保留法律语言的形态特点: 条理、周密、严谨。在这一部分里主要以实例来探讨句构表意的效应, 状语在主、从句中的位置及其效应, 定语从句 such.....as 的应用。(对用词的正确与否不究, 用词可参考译文②。)

第5条 当事人行使权利、履行义务应当遵循诚实信用原则。

译文①: Parties shall adhere to the principle of honesty and trustworthiness in exercising their rights and performing their obligations.

译文②: The parties to the contract shall, in accordance with the principle of good faith, execute the rights and perform the obligations thereof.

评:

★ 译文①、译文②: 都是以介词 **in** 组成的短语作状语, 译文①中 **in** 表示的是时间和行为范围, 意为在履行义务、行使权利时应当遵循诚信原则。译文②中 **in** 短语是方式状语, 按照诚信的原则去行使权利、履行义务。显然译文②中的幅度比译文①要宽。

★ 译文②中的状语短语位置是法律语言中状语的正常位置, 因为最接近所修饰的动词, 杜绝了造成歧义的可能。

★ 译文①中有可能产生歧义。比如:

I saw him in the classroom.

可以理解为: 1. I saw him who was in the classroom.

(我可能在教室也可能不在教室)

2. In the classroom I saw him.

(他可能在教室也可能不在教室)

第 11 条 书面形式是指合同书、信件和数据电文(包括电报、电传、传真、电子数据交换和电子邮件)等可以有形地表现所载内容的形式。

译文①: A written form of contract includes agreements, letters and electronic data (including telegrams, telexes, faxes, electronic data exchange and E-mail) displaying the contents of the contract discernibly.

译文② Written form means the form which shall show has described contents of the contract, such as a written contracted agreement, letters, and data-telex (including telegram, telex, fax, EDI and E-mails).

评:

★ 译文①中给人造成误解, 一份书面合同需要包含若干材料: 信件、电文……(……)等等一大堆东西。接着用一个现在分词短语来修饰这些名词, 这些东西是用来展示合同内容的。这样的句子结构传递的是错误的信息。

★ 译文②抓住了原文的核心部分即书面形式是有形地表现所载内容的形式, 合同书、信件、电文……只不过是例举的几种书面形式。所采用的句构正确地表达了条文内含的信息。所以应该对中文进行“语内译”, 弄明白文字要表述的内容。

第 12 条 当事人订立合同，采取要约、承诺方式。

译文①： When concluding a contract, the parties shall adopt the offer-and-commitment form.

译文②： The parties shall conclude and enter into a contract in the form of an offer and an acceptance.

评：

★ 译文①中用 when 从句的省略句。如画蛇添足，当事人采取这种形式干什么呢？很不明确。正如 when having class he looked outside 这句话我们不能理解为他以看着外面的方式上课一样。

★ 译文② 以 in the form.....作为方式状语明明白白地说清楚订立合同的方式。

第 17 条 要约可以撤回，撤回要约的通知应当在要约到达受要约人之前或者要约同时到达受要约人。

译文①： If an offer is recalled, the notice of recall should arrive before the offeree receives the offer or at the same time as the arrival of the offer.

译文②： The offer may be withdraw, if, **before or at the same time when an offer arrives**, the withdrawal notice reaches the offeree.

评：

★ 译文①主从句颠倒了，主从复合句中，重点的主要的部分做主句，次要部分做从句。也就是译文①把主次倒反了。要约可以撤回，但必须符合条件，条件就是撤回要约的通知到达受要人的时间。

★ 译文②主次摆对了，从句中的状语位置也对，摆在 if 与从句主语之间，这样就使状语部分牢牢地锁定从句的动词，不致于误认为是主句的状语。

第 18 条 要约可以撤销。撤销要约的通知应当在受要约人发出承诺通知之前到达受要约人。

译文①： The offer may be canceled. The notice for canceling an offer should be received by the offeree before he or she issues a commitment notice.

译文②： If, **before the notice of acceptance dispatched by the offeree**, the revocation of offer reaches the offeree, the offer may be revoked.

评：

★ 译文①似乎完全按照中文句子一句一句译的，这不妥当。中文是意合语言，句子随意展开，没有一定句型，译成英文时，（英文是形合语言）有一定句型，有时需要数句中文归纳到一句英文中去。原文中后一句实际是前一句的条件，没有这个条件，前一句要约是不可撤销的。分成两句译就把中文的内在联系切断了。这句该用条件从句时，译文①中却不用从句了。

★ 译文②中条件从句中的时间从句插在 if 和从句主语之间是正确的，主从句关系十分明确。

第 21 条 承诺是受要约人同意要约的意思表示。

译文①: Commitment means that the offeree agrees to accept the offer.

译文②: An acceptance means a statement, made by the offeree, to give the assent to an offer.

评:

★ 这句做语内译后意思很明确承诺是“意思表示”，再用个定语来修饰“意思表示”。译文①用3个宾语从句来译，但没有译出真意。

★ 译文②只用分词短语和不定式短语把条文表达明白。

当然合同条款等法律文件英译中时，除把握用词准确，句子结构严密外，要使译文完臻，还需注意名词的单复数、冠词、时态、漏译、欠译等诸多方面，就不一一细说。

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