

Unit 10

Finances & Authorities

Topics: legal issues, intellectual property, copyright, trademarks, arbitration, complaints

Skills: opening a bank account, apologizing, complaints, letter of complaint

Legal issues

Chamber of commerce and industry offices as a body of public law provide various **legal services** ranging from verification through legal support to settling commercial disputes. Just to mention a few, chambers:

- issue and authenticate/verificate certificates of origin, trade documents, signatures, commercial invoices as well as ATA certificates and other trade documents required in commercial transactions.
- consult about domestic and cross-border trade and business law, and questions relating to industrial property protection, how public administration works, tenders, applications, work safety and education
- work out ethical rules applying to fair market practices
- issue a warning resolution to a business organisation member of the Chamber in case the ethical rules of the chambers are violated, and publish this warning (black-list)
- may send out a notification and call attention to the problem, if a non-member is guilty of an ethical offence;
- may initiate a procedure with the Court of Registration for judicial supervision, or the withdrawal of the entrepreneur's license with the secretary of the local authority;
- run the conciliation bodies set up on the basis of the Consumer Protection Act;
- assist to settle quality and transport damages;
- run qualification and control systems.

The ATA Carnet is an international, uniform customs document, which may be used for simplified export to and return of goods from a foreign country for a definite period of time that will be returned to the sender's country in an unchanged form. It allows the duty-free movement of the goods such as trade samples, temporary export of goods to be shown on product shows and exhibitions or used on location of a film shooting such as machines, office computer equipment, films, motorcycles, racing cars, agricultural machines, furniture, pictures (paintings), sculptures, other masterpieces of art, theatre equipment, means of production, etc.

A **Certificate of Origin (CO)** is a document attesting that goods in an export shipment were produced or processed in a particular country (country of origin). The "origin" does not refer to the country where the goods were shipped from but to the country where they were made. The certificate of origin must be signed by the exporter, and, for many countries, also validated by a Chamber of Commerce, and in the case of certain destination countries, also by a consulate.

Signature attestation is needed to attest that at a certain time some work or service has been done by the enterprise (e.g. construction work). This document has to be attached to various EU applications.



Out-of-court settlement

The advantage of out-of-court settlements are that they are carried out in a fast and quite simple way, it is flexible, confidential and costs less, however, it doesn't have a binding force. There are two main forms: mediation and arbitration.

Mediation means is that to avoid litigation, the parties turn to a third party with expertise and diplomatic skills, i.e. the mediator in their dispute who helps them find solution. The mediator tries to bring the standpoints' of the parties together to make them come to an agreement. If everything goes well, the parties agree on a solution. Finally, the dispute is settled after the parties have signed the agreement document made by the mediator.

Arbitration/Alternative dispute resolution (ADR) means that the dispute between the two parties is examined by an **arbitrator** or an **arbitration board** and that person or board makes a decision. So the agreement here is not made by the parties. That decision doesn't have the same binding force as the judgment of the court. Arbitration boards are independent bodies run by the local chambers of commerce. The proceedings start with the hearing. If the parties can reach settlement, the board approves **settlement by resolution**. If they fail to agree, at the end of the hearing the board issues a **binding resolution** after the parties has made a statement that they accept the decision of the board. If they reject it, the decision will be only a **recommendation**.

Consumer protection

The national **European Consumer Centres (ECC)** established in all Member States of the EU – such as in Hungary – and also in Iceland and Norway form together the European Consumer Centres' Network (ECC-NET). The since 2006 existing European Consumer Centre Hungary is hosted by the **Hungarian Authority for Consumer Protection** as from the 1st of January 2011. Such transactions and activities when a consumer enters into a contractual relationship with a trader seated in a Member State other than his/her residence, is called a **cross-border transaction**. The EU has introduced a range of measures to protect consumers – including:

- a two-year guarantee on all goods sold in the EU
- safety standards on goods like toys, electrical appliances, cosmetics and household products
- rules to prevent misleading advertisements.

The customer (exclusively natural persons) can initiate a process against enterprises in the case of consumer contracts. These may be contract litigations: sale contracts, public utility contracts, financial and insurance contracts, performance contracts, travel contracts, rental contracts, building contracts concernig:

- quality and safety of products and services (e.g.: lack of conformity with the contract, guarantee, warranty)
- product liability (e.g.: damages caused by defective products)
- quality of services (lack of conformity with the contract)
- other issues relating to the conclusion and performance of contracts.





To make it clear how the system works, let's take a specific example: Pierre, who lives in France, bought a digital camera from a German website. He paid €300 in advance and was told the camera had been sent through the post. But it never arrived. Michel tried to contact the trader several times but, when he got no response, he turned for help to the European Consumer Centre (ECC) in France. The French ECC contacted the German online consumer body, which was able to go straight to the trader. As the trader had no proof of postage, he had to provide Michel with a new camera.

Intellectual property is a product of the intellect which is owned by an individual or an organization who can then choose to share it freely or to control its use in certain ways. Different types of intellectual property - literary and artistic creations, inventions, brand names, and designs, to name a few - are protected in different ways:

- Technological inventions are typically protected by **patents**;
- **utility model protection** covers new technological solutions which cannot be patented
- Distinctive features - such as words, symbols, smells, sounds, colours and shapes - that distinguish one product or service from another, can be protected by **trademark rights**;
- The specific external appearance given to objects, such as furniture, car body parts, tableware, jewellery, may enjoy **design protection**;
- Geographical indications –**topographical protection** (e.g. Tokaj wine) and **trade secrets** are also considered to be types of intellectual property and most countries provide some form of legal protection for them;
- plant varieties, genetically modified plants, clones, hybrids are under **plant variety protection**
- The same product can also be simultaneously protected by more than one type of intellectual property right in different countries.

The **industrial right protection** – supporting and licensing organisation is the Patent Office. As informational points national patent offices and chambers of commerce run databases and provide SMEs and larger companies with free of charge advisory service and professional guidance in the following question about:

- the core concepts, types of protection, applications forms,
- the most important fields and institutions of the Intellectual Property Right protection,
- industrial right protection procedures – explanations with flowchart,
- copyright: which works and creations can be protected with industrial right protection and which can be protected by the tools of copyright,
- for inventors: the terms and conditions of patenting and the protecting of samples both for use and for design,
- royalties,
- the protection of an oral or drawn trademark, the name of products and companies, logos, slogans, tunes and voices, figures and holograms,
- softwares protection,
- licence agreements,
- extension of rights to the memberstates of the European Union and the countries of the European Patent Agreement, which are necessary for achieving protection abroad
- legal matters such as specific cases of violating the intellectual property right, legal consequences and possible legal remedies.



Speaking

Dialogue 1: Opening a bank account

Role A: You are Katalin/Károly Bertók, working in Croatia. You are at the local bank branch now. You want to open a bank account in order to receive your monthly payment transfer. You need a bank card as you want to have access to the money without any restrictions. You also want to settle your gas and electricity bills by bank transfer every month. Ask the bank clerk about the following:

- The most suitable type of bank account and possible rate of interest
- How to get information about the balance of your account
- Conditions of opening a bank account
- Overdraft facilities
- Bank card services
- Fees charged for these services

You are starting the conversation.

Role B: You are a bank clerk at the local OTP branch, in Croatia. A Hungarian customer wants to open a bank account. You want to know about the following:

- Purpose of the bank account opening

Answer the customer's questions by giving the above information:

- You can offer various types of **current account** packages with a relatively low **interest rate** but all-time access to the money. You can recommend two types: one with online banking services (online money transfer, online bank statement etc.) and the simple one only with SMS notification services. You would not recommend a deposit or savings account.
- With the plastic card cardholders can withdraw money from ATM machines any time and you can pay by bank card at Points of Sale Terminals.
- Customers are sent a **bank statement** every month about the balance of their account. On request, they can pick it up from the bank counter or have it posted to a mail box or get an SMS or email.
- **credit lines** are stated by the bank based on the customer's credit rating after a credibility test has been made by the bank
- Any private individual over the age 18 can open a bank account. Customers have to identify themselves with an ID card or passport, an address card. They have to fill in an application form
- electricity and gas bills can be transferred by **standing order/banker's order** (lump sums) or by **direct debit** (bill is based on your monthly consumption)
- Opening an account is free of charge, and there is no initial deposit required. For running the account 0,02 % of the transaction sum is to be charged.

Your partner is starting the conversation.



Dialogue 2: Complaint about damaged consignment

Role A: You are Anna/Anton Milanovic, managing director of 'London Dream', a retail shop chain in Cakovec, Croatia. Complain about the consignment of the 'Eszterházy' china tableware ordered by you on 23 April from Herendy China Factory, Hungary. Call the head of the export department and discuss the following points:

- You duly received the consignment of china tableware on 12 May. Nonetheless, on unpacking the cases you found that about one third of the goods was damaged (cracked, chipped or totally broken).
- You have already contacted the shipping company and you were told that they had fully observed the shipping instruction.
- Examining the cases you found the following deficiencies: although the outward packing was faultless the inside packing was faulty as the cases had not been properly padded.
- Under the terms of the insurance policy, the seller is liable for the damage as it has been caused through improper packing.
- You want the **prompt replacement** of the faulty goods and the reimbursement of the repacking as compensation. For any delay you will be forced to charge the full price of the whole consignment since without the missing parts the china sets are unsaleable.

You are starting the phone conversation.

Role B: You are Nóra/Norbert Lantos, head of the export department and are receiving a phone call from one of your buyers, Anna/Anton Milanovic, managing director of 'London Dream'. The buyer is complaining about the goods sent by you in May. Discuss the following points:

- Apologize for the damaged goods and ask the buyer if they have investigated the forwarder's liability. The damaged could have been caused by improper delivery.
- You accept your liability for the damage and are willing to compensate the buyer for the deficiency. Ask him/her about any preferred solutions to the problem.
- You can send the missing parts within a week. You also need an invoice about the costs of repacking the sets, which you will transfer to the current account of the buyer's company within 15 days from receipt of the invoice.
- Apologize to the buyer for the incident.

Your partner is starting the phone conversation.

Dialogue 3: Complaint about an accounting error

Role A. You are Fiona/Frank Fergusson, an accountant at Santon & Son Ltd. You ordered a larger volume of wallpapers (20 rolls of 'Rochester' wallpaper, order no. CV 234) from Winston and Co. Ltd. On receipt of the invoice you detected a number of errors. Call the supplier and complain about the accounting errors. While acting out the situation mention the following points:

- the invoice no. Y 1146 for EUR 300 has been debited twice
- the transport costs were omitted in the invoice, although according to the agreed delivery terms you have to cover the costs of delivery (ex works)
- you have been charged for a delivery of paint brushes but you have never ordered or received them. Your partner should check his/her delivery book.
- You have deducted the transport costs from the price of the paint brushes and the EUR300 surplus, so the supplier owes you EUR 100. You will pay EUR 100 less for the consignment and transfer your partner the reduced amount once you have received their confirmation of this amount.

You are starting the phone call.

Role B: You are the head of financial department at Winston and Co. Ltd, a wallpaper producer company. You are getting a phone call from one of your buyers, Santon & Son Ltd. They are complaining about the invoice you sent to them. You would like to detect the problem and find an acceptable solution. Act out your role while considering the following points:

- ask about the details
- ask about delivery term, the contract number and check the invoice in your database
- admit making an accounting error
- state that the paint brushes have been packed into the consignment by mistake
- you will pick up the paint brushes when you deliver the next consignment
- ask your partner how (s)he would like to sort out the problem
- accept his/her suggestion
- apologize to your partner for the mistakes

Your partner is starting the phone call.

Writing

Letter of complaint

In case that either the buyer or the seller fails to perform, that is, doesn't fulfil the terms of the contract, a letter of complaint is sent to the party who is at fault.

A, SELLER is at fault

DEFECT IN QUALITY

- **wrong quality:** the goods are of inferior quality
- **wrong shipment:** completely different from the goods on order

In these cases the buyer may: refuse to accept the goods or accept them in return for an extra discount

DEFECT IN QUANTITY

- **oversupply** - more goods have been delivered than have been ordered
- **shortshipment** –shortage in weight –not enough goods have been delivered.

In this case the buyer may: refuse to accept them or accept them as a partial delivery or pay for what has been delivered and cancel the rest of the order

DELAY

when the seller fails to deliver on time. The buyer urges delivery and extends delivery time. If even then the seller doesn't deliver, the buyer may:

-extend delivery time once more and claim damage

- buy the goods elsewhere at the seller's cost and claim compensation for the loss caused by the delay or cancel the order altogether.

UNSUITABLE OR FAULTY PACKING

can cause damage to the goods and the insurance company will not accept responsibility for this. In this case the buyer may accept damaged goods if the supplier offers a discount.

If the goods are so badly damaged that they are unsaleable, the buyer will demand replacement.

B, BUYER is at fault when

the buyer refuses to accept the goods without sufficient grounds

the buyer may cause difficulties by omitting to give transport instructions in time.

The seller may store the goods at the buyer's expense, or he is free to dispose of them after a certain period of time

The buyer refuses to pay though the goods have been delivered and accepted. It is necessary to send reminders to force payment.

Exercise:

Fill in the gaps in the following letter of complaint about late delivery. Use the following words from the box:

cancel, with, complain, ordered, for

Our Cosmetic Products

Dear Mr. Filan,

We regret to have to about late delivery of cosmetic products wefrom you on 22 July 2010. Although you had given us guarantee in delivery within 2 weeks, we did not receive them until yesterday.

We are very unhappythis delayed delivery. We must ask you to arrange shipment immediately, otherwise we shall have no option but to it and obtain the products elsewhere.

We feel there must be some explanation..... this delay and await your prompt reply.

I am writing with reference to.....

Yesterday we received

Today the goods we ordered from you have arrived

We are sorry to inform you that

We regret to inform you.....

We are disappointed to find that.....

We were surprised to find that.....

We found that the goods were not up to the usual standard./is far below the usual standard.

The goods we received are not up to sample.

Your last delivery ofis not of the type we ordered.

On opening the cases we noticed that

On checking/examining the goods received we found that.....

A large part of the consignment is badly damaged.

You will have to accept liability for the damage as it is clearly due to improper/unsuitable/faulty packing

We have just received a consignment of 400 pieces ofmodel X although our order was for Y.

We were surprised to find that the complete order was not delivered.

Delivery is now 3 weeks overdue.

We received your Advice of Dispatch more than a week ago but we are still without the goods. Please look into the matter.

As that is ... and we have not yet received advice of delivery, we are wondering whether the order has since been overlooked.



We shall return the consignment for replacement. Please credit our account with the shipping costs.
Under the terms of the guarantee, we should be most grateful if you would send us a replacement.
We must ask you to replace the damaged goods.
You will have to send a replacement for the faulty items.
You will have to take the goods back.
We are prepared to keep/retain the goods at a substantially reduced price.
As the goods are unsaleable/unmarketable we have no other choice but to return them
As the goods are of no use to us we have no alternative but to place them at your disposal.
We cannot but store the goods at your expense until your agent can collect them.

This situation is causing us a great deal of inconvenience.
We demand a substantial refund.
We demand some fair compensation for the damage.
We have to claim adequate compensation for our loss.
We maintain our claim for damages.
Please let us know how you wish to indemnify us.
We will have to cancel the order.
We will have to withdraw from the contract.
We will have to terminate the contract.
We expect you will devote more care to the execution of our orders.

We have to refer the matter to/resort to arbitration.
We have to take legal action.
We have to sue you for damage.
If you do not deliver the furniture within ... of the date of this letter, I will consider you to be in breach of contract. The contract will then be terminated and I will require a full and immediate refund.

Writing Task:

You are a distributor of technical equipment and appliances. Instead of the 18 pieces of Panther LCD TV sets (order number: 68794) ordered by your company, you have received 18 pcs of Tiger LCD TV sets. Please write a complaint letter to the supplier and add the following points:

- you cannot integrate the received goods into your product range (your customers prefer high-end products with sophisticated function and performance) you don't want to retain the wrong goods
- ask the supplier to give further instructions
- ask for information about the date of replacement as you would like to prepare for the receipt of the new consignment in time
- you can store the wrong consignment for two days free of charge, after it, you have to charge storage fee
- Should the products fail to arrive within 10 days from receipt of this complaint, according to the contract the seller will have to pay a 20% penalty fee