

The Statutory period

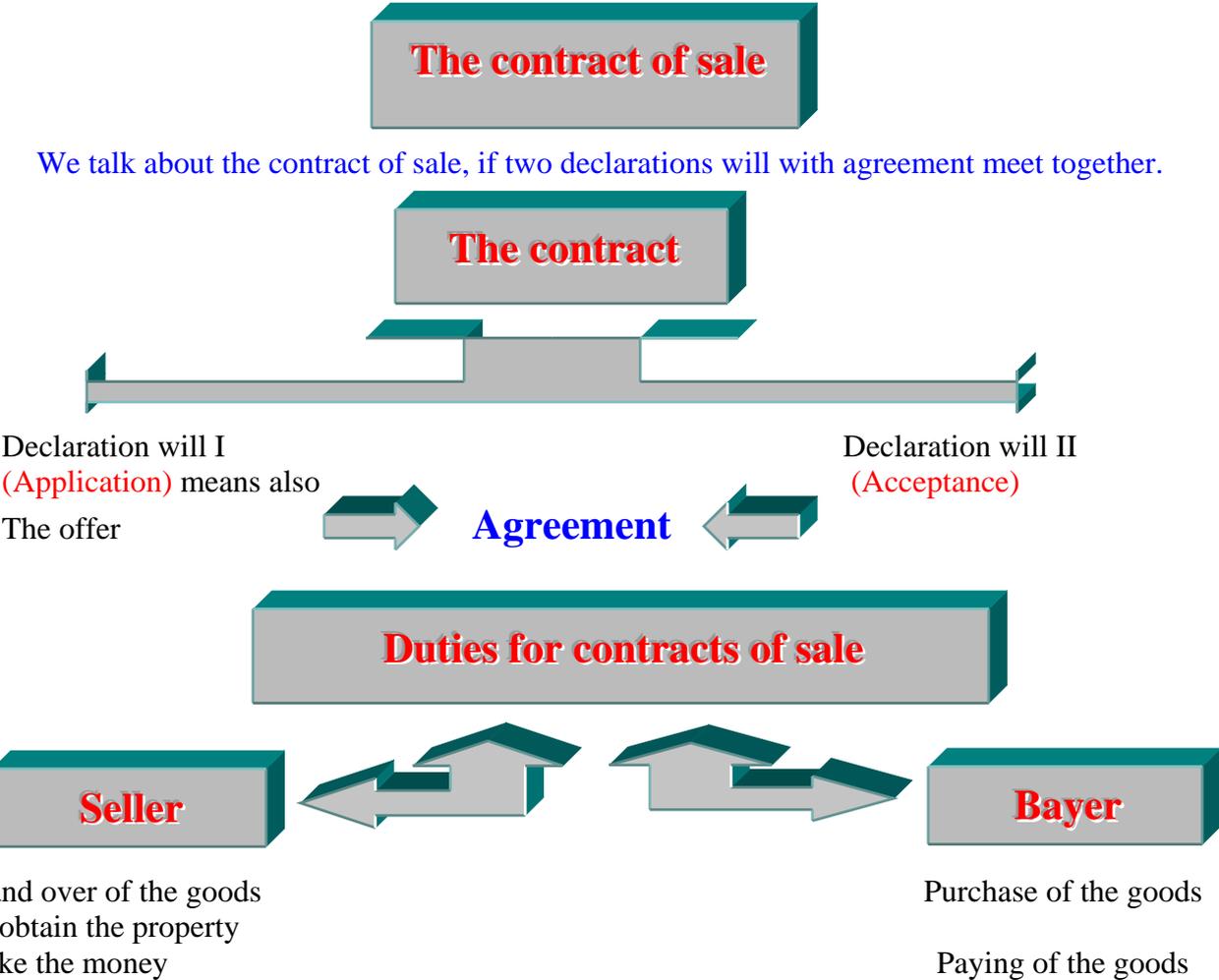
Statutory period means:

The paralysis or debility of an existing legal claim through time process and not using of this right, without removing the right from the demander.

General deadlines:

- **Claims from judgement**, statute-barred after **30 years** and starts with day of announcement through the court
- **Claims between citizens**, statute-barred after **2 year** and starts on January 1st. from the next following year
- **Claims between business people** as well as from rent and lease, statute-barred after **4 years** and starts on January 1.st. from the next following year

To get the claims, we have to take judicial reminder, available in stationer's shops
This we have to send to the responsible court. The court will send now the reminder to the addressee. With the delivery of the reminder, the statutory limitation period starts again.
If the other side doesn't show action after that we can start to distrain.



Property:

It's the **real right of disposal** about a matter

Owner:

Is the **legal disposal** about a matter?

The following essential points should be in the contract of sale:

- Personnel dates from both parties
- Exact kind, condition and quality of the good
- Value of the goods
- Conditions for delivering and time
- General terms and conditions
- Paying conditions
- Place of fulfilment and court in charge
- Place, Date and signature
- Possible reservation of ownership

Purchasing lead time:

- **Immediately purchase**
- **Purchase for forward** for example you order a car on December and it will be delivered on March
- **Purchase on call** for example you order, on the beginning of the year, big quantity of meat, which can be enough for the whole year, but the delivering is possible monthly too.
- **Fix purchase** is a time – point purchase, here we can get hedge transaction, for not keeping the rules to minimise our loss. For example, the deliverer promise, to deliver the goods for a certain time on a certain day. If he cannot keep this deadline, me as the buyer, I can get the goods I need from other dealers. All extra charges I have because of that, I can give to the one from the first contract, who cannot deliver.

Discount law:

The law says that **3 %** are allowed. But we have another possibility to ignore this law.

Just ask for a **house price** from the dealer. This is legal correct. This was before, now since 2001 this law is not valid anymore and you can deal with the price like everywhere else.

We distinguish between **discount** and **sconto**

Discount: is a reduction for a big quantity

Sconto: is a reduction for an early paying

Place of fulfilment:

Is the place, where the certain debtor has to pay his performances?

Reservation of ownership:

Should be part of each contract to prevent any trouble after.

That means until the goods are not totally paid, the fixed points from the contract are not valid

Disturbances for the fulfilment of contracts



Defective delivering (1)
Delivery compulsion (2)

Acceptance compulsion
Payment compulsion

(1) Assumption for the practice of the rights

- Checking the good to quality and quantity
- For errors, we have to get **Lack reproof**. This must be always exact. If errors are visible we have to complain about it immediately!

Base on the Lack reproof, there are rights for the buyer, this are:

- Transformation (its an withdrawal from the contract)
- Exchange (is the trade in return for new flawless goods)
- Reduction (Price reduction, which is asking price)
- Compensation for damages (its just possible in 2 cases)

1. For underhand deceits (Fraud)
2. If explicit promised qualities are missing

It is important to know, that the decision which of this four possibilities we use, its only up to the buyer and not from seller.

Delivery compulsion:

- Its an warning with deadline (except for Fix purchase)

The following right are valid:

- ◆ **Insist on the delivering**
- ◆ **Withdraw from the contract of sale** (no good possibility, if the we have cancellation of contract, we cant get our compensation for the damages)
- ◆ **Renounce on the delivering** and get possible compensation for damages

Acceptance compulsion:

Assumption for the practice of rights:

∴ There are no assumptions for the right (**commercial sign**)

The following right are valid:

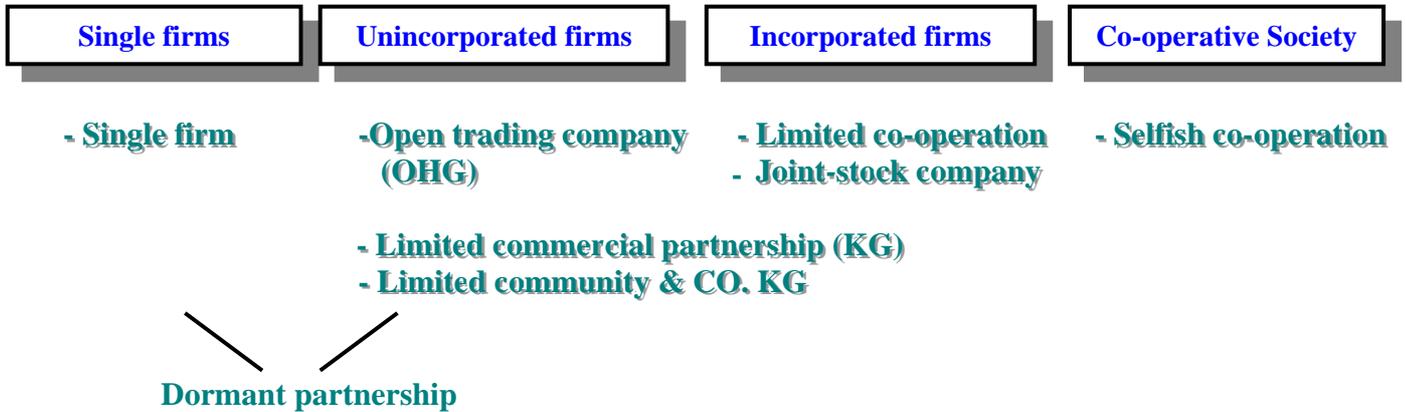
- **Insist on the acceptance**
- **Storage** (if retardation, which comes from the buyer, the seller can storage the goods on the costs from the buyer)
- **Self-help or purchase for need** (ordered goods, which are not required anymore, could sell from the seller to other consumers. The difference between the fixed price from the first buyer and the one who got it now, has to pay from the initiator (first buyer).

Payment compulsion:

Assumption for the practice of rights:

- Commercial warning
- Judicial reminder
- Right for the foreclosure (equitable levy) if not keeping the obligations

Different shapes of companies and Company mergers



Principle of all this forms of companies is, the **optimising of profit (except the co-operations)**

For the **dormant partnership**, it is just an investor, which give us money in case of not liquidity
This possibility we have for single firms and unincorporated firms.

| OHG | KG | Single firms |
|---|---|---------------------|
| Minimum 2 Persons as Business associate | Minimum 2 Persons as Business associate | High flexibility |
| All business associate have the same rights | One of them must be liable for everything | |

The two persons from the Limited commercial partnership

- The **unlimited partner** is the one with full liability. He stays with his private and business property for all financial problems
- The **limited partner** is just liable with his business account.

GmbH

- In this limited co-operation we don't have this kind of liability like with OHG or KG.
- Liability is limited until the minimum deposit from (50000 DM)
- Incorporated firms are legal persons and as them they has to pay corporation income tax (50 %). After that they have to assess the profit still with income tax. We call this **double taxation**, which means the employer has to pay around **75 % from his profit, as tax.**

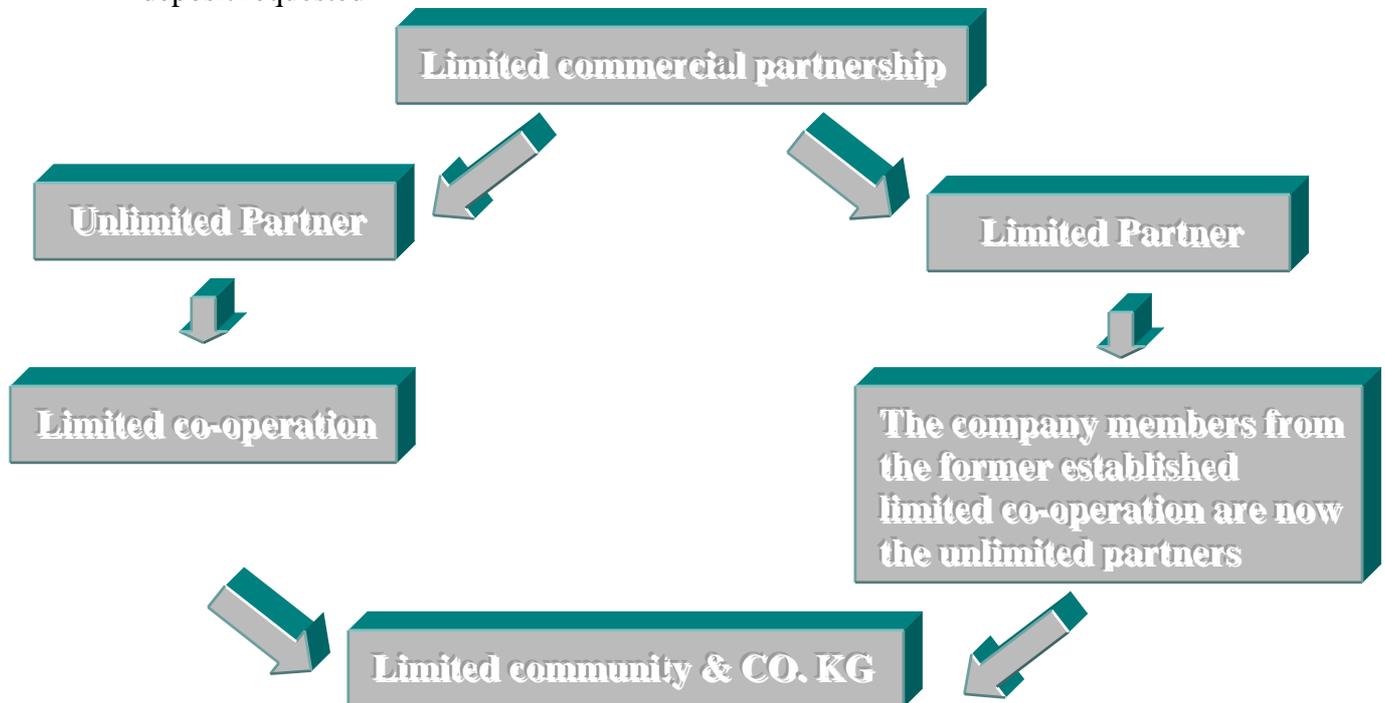
For the comparison between unincorporated and incorporated firms with have to fix the following:

- ◆ **Unincorporated firms** have low **taxation**, but the risk for the business is much higher
- ◆ For **Incorporated firms** we have an low business risk, but through the **double taxation** we have high running costs

For that reasons some people try to bring together the advantages from unincorporated and incorporated firms. The result they got is **Limited community & CO. KG**

Example:

1. The establishment of a limited co-operation with the minimum deposit from 50000 DM. It don't must be cash it can be also vehicles, buildings etc.
2. The establishment of an Limited commercial partnership with 3000 DM – no minimum deposit requested



The unlimited person doesn't have to be a natural person.

If like on this example, the unlimited person is a limited co-operation, in case of bankruptcy they are not liable. That means, in case of bankruptcy, they first loss the 50000 DM from minimum deposit and than the 3000 DM capital from the limited persons.

Private property cannot be distrain, because the limited Co-operation is an legal and not an private Person.

But even do its difficult on the beginning to establish a company like this. The banks asking for financial collateral's, before they give credits. But if the owners have other collateral's it is a good business form.

The organs from the joint-stock company

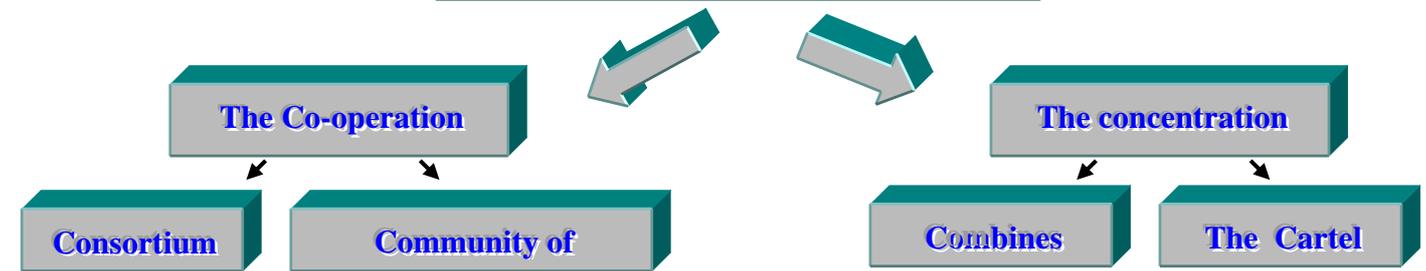
1. The general meeting from the shareholders
(Is come together once a year – Instance to decide)
2. Board of directors (executive Instance)
3. Supervisory boar (Control instance)

The shares, with an example for one share at par 50, - DM

- **Nominal value, means** the share start with 50 DM on the stock exchange
- **Market value** from 500 DM, that means the share cost for the purchase 500 DM
- **Shareholder dividend**, this will always paid to the nominal value, that means for an dividend from 20 % it would be 10 DM (20 % from 50 DM)
- And this one means again, that we have **yield** from 2 % (2 % from 500 DM)

The goal for the shareholders should be to get a high yield!

Company mergers



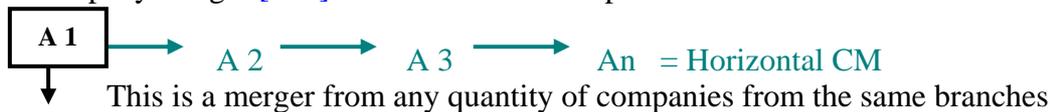
Economical merger

Mostly private – short term and limited, like (Tennis or Bowling club)

Fix merger for long terms, strong restriction of the own opinion. This will be subordinated to the well-being of the combines

The set up from the company mergers:

Company merger [CM] are unions from companies



B 2

C 3

N n = Vertical CM

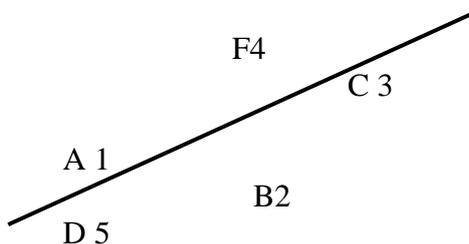
The vertical CM united successive productions- and trading levels, which produce one final product

Advantage:

➤ Its, that we always have one safe supplier and customer

Diskadvantage:

➤ Can happen if one part doesn't work properly, the whole union will crash down. We also call this (Domino effect)



The diagonal merger:

Combination of totally different firms, with different Productions and processes.

The goal: is the mutual share of economical risks and the optimise of profit and success.

The general goals of company mergers:

- The getting of advantages on the international and domestic markets
- Rationalisation through product technical advantages
- Using of financial advantages
- Optimising their positions and maximise the profit

The anti-trust law

We distinguish:

1. Cartels, which must be registered
 - Here we just have to inform the Federal Cartel Office
 2. Cartels, which must be registered but are not without contradiction
 - Here we have to inform Federal Cartel Office too. But in this case the office will decide if the merger is allowed or not.
 3. Permission required
 - Here we have to ask first the Federal Cartel Office before we can establish the company. They will get the decision and approved or not.
 - **Exemption** is the guiding rule competence from the Federal economy ministry, that means in special cases the ministry can disregard the Federal Cartel Office and can approve cartels which was already refused through the office
 4. All cartels, which are not valid for, group 1, 2 or 3.
 - This you will find in § 1 from federal anti trust law
- To find out which firm or company is in which group, the Federal Cartel Office has a catalogue for all this things

We actually have one more category, but just an unofficial one.

Breakfast cartels:

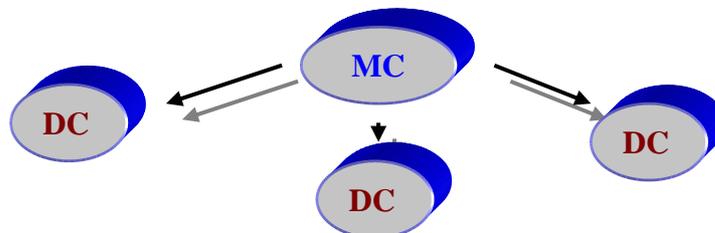
Breakfast cartels are forbidden, not provable and informal agreements!

Example:

Several land lords meet to talk about the last year of business and some private things. In this round they also talk at the same time about the beer prices, and note that they are to low for them. Just few days later all landlords raise the prices for the beer together. Here was an agreement, but the Federal Cartel Office has no evidence for this action.

The combine

The combine is the severest form from the company shapes



MC = Mother company

DC = Daughter company

The decision freedom is very much restricted

The restaurant right

The application for the concession you can get from the responsible district office – trade supervision office. The qualification will be fixed through 4 criterions:

Personal aptitude:

- ◆ If it's apparent that the applicant is alcoholic, but it just counts if he was already violent in this connection
- ◆ If it's predictable, that the applicant will use his concession to exploit older and social weak classes

Instruction evidence

- ◆ Here the applicant has to get essential skills and knowledge. These seminars can be visited in the chambers of commerce. But everybody can get this, because a final test after it is not required from the government. Therefore this fact is actually not relevant.

Suitability of the rooms and facilities

- ◆ Here they will check the fulfilling of all legal requirements from the buildings

Observing of the public interests:

- ◆ Here we have to guarantee, that the performance from the restaurants, bars or hotels, the residents will not be affected. For example if somebody plans to open a disco between a hospital and old people's home.



Personal concession

- **Continuous permission** (expired after 3 Years, as well as through death or return) and its long term fixed
- **Temporary permission** (will be issued for 3 months) because the proceedings for the continuous permission can be very long-winded. Therefore the authorities give this kind of permission to bridge the duration.
- **Deputy permission**, will be given for example to big combines.
- **License** is given for short-term events like festival tents, or open-air events etc.

Real concession

This is fixed for lots, buildings or others. But today you can't get this kind of concession anymore. Already fixed are still valid. If they stay for 3 years not in use, then it will be cancelled, for example if the company is closed for this duration.

The closing order

⇒ Is the time where the hotel has to be closed

The closing hour is different in each federal land; as well as other separate regulations can be arranged too, from the commune. That means the closing time can be earlier and later too.

If the closing time start, all the facilities must be close, so that persons from outside cannot enter the restaurant / hotel anymore.

For the people which are sill staying inside, they have the possibility to finish their drinks and foods. But for the owner its not allowed to serve new ones. The landlord makes himself punishable, if he tries to get the necessity of closing time with all means. For any trouble he should call the police. He is also responsible, that people, who are drunk already, don't drive with their cars anymore.

The service contract

The owner has contractual freedom that means he cans his guests, anytime and without calling reasons turn away. The only exemptions are emergency situations. If ever he turn away persons than it should be not against the german constitution (human dignity § 1).

For hotel reservations the guests should be arrive until 6:00 p.m., or they arranged explicit a different time after 6:00 p.m. If the guest got reservation and when he arrive no rooms are available, he can look for a new hotel. The difference between the fixed price from the first hotel and the one, which was found from the guest later, has to pay by owner from first hotel. The decision, which kind of hotel, is up to the guest and cannot ordered from the hotel owner.