“Reasonable” and “best endeavour” clauses: What is the difference?

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An agreement to use “reasonable endeavours” or “best endeavours” is an obligation on the parties to do all that can reasonably be done in the circumstances to achieve the matters to which these phrases refer.

These phrases are used to qualify a party’s obligations in a commercial agreement and are usually used in contracts where uncertainty exists surrounding a party’s ability to meet the objectives. Some recent cases have examined the application of these clauses and provide insight into their operational effect.

What do “reasonable” and “best endeavours” mean?

Though a “best endeavour” clause has been found to place a stricter obligation on parties, in Cypjayne Pty Limited v Babcock & Brown International Pty Ltd the Court said that the expression “reasonable endeavours” imposes similar obligations. The conduct of the party will be measured by what is reasonable in the circumstances in light of the capacity of the business and expected responsibility and qualifications of the contracting parties. The Court looked to the object of the agreement and the financial capacity of the party in determining if “reasonable endeavours” had been undertaken.

The clause also required a party to undertake “reasonable commercial endeavours.” Reasonable conduct in this instance included identifying taxation issues and making recommendations for the agreement as to how these would be resolved.

An obligation under a clause may also last indefinitely. In Centennial Coal Company Limited v Xstrata Coal Pty Ltd, the court held that even if there were no means to pursue the undertaking, the obligation may still exist if its achievement becomes practicable in the future.

These cases show that the courts have not given a prescriptive legal meaning to such clauses applying them as circumstances dictate, resulting in ambiguity over how such clauses will be applied. Express reference to timing of signature would have avoided these issues.

Tips when utilising the phrase “reasonable” or “best endeavours”

When contracting give some thought in advance to what it is that you wish to achieve by inclusion of these clauses. Then avoid ambiguity when drafting. The standard or steps of conduct expected of the parties should be made as clear as possible.

This can be achieved by outlining the steps required to fulfil the obligation or a standard set of industry conduct to be undertaken. Provide time frames if possible or deadlines which may be extended by mutual agreement. This will clarify the intentions of parties when entering into the agreement.