

## **Endeavours Obligations: “Best” “Reasonable” “All Reasonable”**

Most construction related agreements impose reasonable endeavours, best endeavours and/or all reasonable endeavours obligations on one or both parties. The problem with using these types of phrases is that they are not usually defined in the agreements. Consequently, in the event of a dispute, the courts are left with the task of deciding what a particular party must do to discharge their obligations in the particular circumstances of that case.

Helpful clarification on the meaning of these phrases was given in the case of Rhodia International Holdings v Huntsman International (2007). Whilst an obligation to use “reasonable endeavours” permits a party to take a reasonable course of action without sacrificing its commercial interests, “best endeavours” (whilst not an absolute obligation) requires a party to take all reasonable courses of action that it can, which indeed may involve sacrificing its commercial interests.

The court in Rhodia also indicated that an obligation to use all reasonable endeavours was not very different from an obligation to use best endeavours. However, in the recent case of CPC Group Limited v Qatari Diar Real Estate Investment Co (2010), the court said that ‘all reasonable endeavours’ was a middle ground between ‘reasonable endeavours’ and ‘best endeavours’.

It is always prudent for parties to minimise uncertainty in their contracts by incorporating wording to clarify what is required by any "endeavours" clauses in the agreement. For example, this could include specifying the particular acts the obligor is required to perform, as well as specifying financial limits to satisfy the obligation (or a minimum spend threshold). The contract could also expressly say for how long the obligor should pursue a certain course of action to satisfy its endeavours obligation.