

BACK TO THE BASICS

HSA's bite-sized analysis of topics of relevance and interest in the world of transactions

December 06, 2021

TRANSACTIONS PRACTICE GROUP



Best Efforts v Reasonable Efforts v Commercially Reasonable Efforts

While drafting and negotiating commercial or investment contracts, we often encounter the phrases 'best efforts', 'reasonable efforts' and 'commercially reasonable efforts'.

Even though these phrases are not defined in the Indian Contract Act, 1872, or any related statute that governs the broader world of contracting principles in India – and there isn't enough jurisprudence that has emerged on their distinctions from Indian judicial pronouncements – their routine use is intended to reflect the differential standards of efforts to be employed in order to perform the corresponding obligation.

- **Best efforts:**
 - Highest standard of effort that a party needs to make
 - The party should have tried all possible ways to fulfil the associated obligation for which such efforts have been drafted, even if such effort causes hardship or includes difficult steps
- **Reasonable efforts:**
 - A less onerous standard wherein a party is expected to act as a reasonable man and make efforts only to the extent that they appear feasible and reasonable
 - Does not mandate the requirement of trying all possible steps, including those that cause hardship to the performing party
- **Commercially reasonable efforts:**
 - Used in commercial contracts where expected standard is not of a reasonable man but that of commercial or business prudence
 - In the Indian context, this is viewed as a standard even more diluted than that of a reasonable effort
 - Internationally, the position remains open to interpretation i.e., whether it is indeed a standard lower than reasonable effort, or closer to best efforts because commercial prudence in a commercial contract should drive the performing party to put in more effort than just reasonable man, so that the commercial intent behind the clause becomes more likely to get fulfilled

Each of these standards are themselves a dilution of an absolute standard of performance that an obligation would otherwise have. Illustratively, a covenant to ensure that 'Company X would certify that its statutory registers are maintained in complete compliance with law' is an absolute standard of compliance. A covenant that 'Company X would employ best efforts to ensure that its statutory registers are maintained in complete compliance with law' is a marginally lower threshold of effort.



Saurya Bhattacharya
Partner

saurya.bhattacharya@hsalegal.com



These tools of negotiating down an absolute obligation are handy for negotiations. However, it is worth highlighting to a client the ambiguity associated with them and the performance and enforcement consequences thereof under Indian law.

CONNECT WITH US



www.hsalegal.com



[HSA Advocates](#)



mail@hsalegal.com