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Get rid of ambiguities

While drafting a contract, spell out everything in requisite detail so that there is no room for alternative views on what is meant and intended

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t is often worth looking at what causes two parties to be in a dispute, especially in the current climate, where minimising risk is all important. An obvious cause of dispute is when a contract has terms in it which are not defined. Both parties may think that the other party agrees on what is meant by certain wording, but that is a big risk to take, especially as personnel may change over the years, meaning that different people might be administering the contract by the date when a dispute occurs.

An obvious example is time-frame. A contract may say that something has to be done within four weeks. But that begs the question of which event triggers the beginning of the four week period. Furthermore, if the starting date was Monday 28 March 2011, some people will say that four weeks means a deadline of 28 April 2011, whilst others will argue that the four weeks elapse on the fourth Monday after March 28, 2011, ie on Monday, April 25, 2011.

The critical factor is spelling out everything in requisite detail so that there is no room for alternative views on what is meant and intended. Indeed, it is often the case that diagrams, drawings and maps give greater clarity than mere words. In such instances, these pictorial representations should be annexed to the contract.

Similarly, it is often the case that both parties agree on a somewhat intricate financial calculation by which to determine the monetary amount owed by one party to the other party. In these scenarios, we tend to advise that it is best to have a schedule attached to the contract, giving a worked example with numbers, so that there can be no later debate as to how the monetary amount was going to be quantified.

**Arbitration tangles**

Most contracts also have clauses about governing law and who will hear any dispute. It is not uncommon to read sentences such as: “Arbitration: The Oman Courts will arbitrate upon any dispute.” This immediately causes confusion, as some people will say that this means that the Oman Courts will hear the dispute, whereas others will say that the sentence evidences an intention by both parties to opt for arbitration as opposed to resolution via the Courts.

Another problem is that sometimes the contract does not specify with exactitude who are the contractual parties. This is especially important when there may be two or more affiliates with almost identical names. To avoid confusion, it is best to specify the address and CR number of each entity at the beginning of the agreement.

One rule of thumb is that a well-drafted contract should begin with precise definitions of terms. The defining of key terms negates the ability of either party to argue at a later date. In addition, a good contract should be easy to read and very clear as to what is meant and mutually intended by the parties. It is important to explain in a contract as to why the parties are agreeing to do something which perhaps is not entirely orthodox or the conventional way of doing things.

In the final analysis, parties to a contract need to keep in mind that, if there is a dispute, it will be a third party (court, expert, or arbitral panel) who will decide what was meant by any ambiguous contractual wording. So it is wise to keep in mind, when drafting a contract, as to how it would be interpreted in later years by someone who is not necessarily totally familiar with the industry in question. It also pays to be a cynic when writing a contract - if you can envisage the ways that the other party may try to circumvent the contractual wording, you can draft the document in such a way as to eliminate any loopholes!