It is important to remember all phrases must be interpreted in context, and the above analysis must always be viewed in the circumstances and drafting of a particular contract.

However, it would appear that essentially the definition of the phrase "best endeavours" means what many had thought "reasonable endeavours" meant.

"Best endeavours" means some honest and positive effort, but must be balanced against any other duty or commercial interest. Action, if required, should be taken, unless prohibited by other considerations. The test is quite simply what a reasonable person should do in that situation, at that time after considering all the circumstances.

If the approach from the English Court of Appeal is followed in New Zealand, "reasonable endeavours" will have some difficulties. Commercial considerations can easily remove the obligation to adopt a course of action, providing the party is not acting in bad faith. Only very minimal effort may be required, if it at all. There is also the added complication that Courts may not wish to determine whether the test has been passed if clear criteria are not specified in the contract itself. This only adds to the uncertainty.

"Reasonable endeavours" seems from the English cases not to mean an obligation to act particularly "reasonably" (as used in normal everyday speech) to the other party.

When this is contrasted with "all reasonable endeavours", then the possible argument of non-enforceability seems to be solved. However, the similar minimal effort as "reasonable endeavours" would be required, but it is likely a greater number of possible courses of action should be considered under an "all reasonable endeavours" clause.

The solution to all of the judicially created uncertainty is to draft into any agreement the actual intention of the parties -what they mean by "reasonable endeavours", what are the "reasonable" criteria to be met, and the considerations a "best endeavours" approach should weigh up.

Very few contracts do address these issues at present. Yet with the extensive use of these phrases, (often as a "fall-back" position or for ease in drafting) the potential for misunderstanding or argument is widespread.

Referring Principles:

IV.6.5 - Best efforts undertakings