
From: Nick Smith
Sent: 13 December 2007 13:05
To: 'Fitchie, Andrew'
Cc: Graeme Bissett; Colin MacKenzie
Subject: RE:

Thought we had bottomed this one out on Mon. My view is that tie is acting as delivery agent in only the loosest possible sense of the legal term. Indeed, Pinsents have confirmed in their email that tie is acting as principal, not agent here. If this were the only part which gave comfort then this may be a cause for concern but I think there is sufficient comfort in the rest of the document to stop any argument.

Kind regards

Nick

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From: Fitchie, Andrew [<mailto:Andrew.Fitchie@dlapiper.com>]
Sent: 13 December 2007 13:00
To: Nick Smith
Cc: Graeme Bissett
Subject:

Apologies for piece meal.

Graeme had asked me to pass on comment on the OpAgt Clause nature of relationship.

Clearly no intention of partnership, so fine. However, I would ask you to consider the reference to 'no agency'. Tie, it would seem to me, does act as CEC's agent. The clause would normally be there to exclude arms' length parties asserting that they had implied authority to bind one another.

I would have thought that the governance arrangements control that aspect comprehensively and so my concern about the clause is that again tends towards indicating that the parties treat each other as separate commercial enterprises.

Kind regards

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