

Analytical techniques to understand the financial regime of trade agreements, financing, investment and oil/petroleum contracts

Preamble:

Assuming the stability of the variables and side factors, affecting the cash flows of a project at the time of reviewing the financial régime of each contracts, it (, either in its simplistic or its complex form, as commonly used in different contract types such as E,E&P,EPC,F ,EPC&F,EPCF,.. BOT, BLT... PSA, BUYBACK...) can be considered as a main factor in determining the nominated profit or loss, remuneration fee ,Price, return on investment,...therefore ,Understanding the financial regime of a contract is a vital action to analyze all respective risks on an investment and then calculating its profits and return.

Role of words and vocabulary

In various contracts whether simple or complex, words, idioms and multiple phrases are used along with the identified terms and provisions.

Any word or phrase may imply an economic and financial sense. Likewise, any condition or adverb used in a contract may

- limit the meaning and the concept of a word or a phrase
- make a commitment and or an obligation for each party
- lead each party to accept or reject the occurrence of an event during a specified period
- provide the basis for specific measures or indicators
- prohibit or produce a value or a benefit for each party
- create risk or different hazards
- allow any party to fraud and abuse in different ways
- encounter the execution of the contract with several obstacles
- cause a variety claims on the contract performance quality, any party's (contractual) rights, approving or rejecting some items of the incurred capital expenditures and the recovery mechanism of them and many other cases of this kind
- reinforce or override the other constraints or conditions and ...

Transposition (the) writing words and expressions, may, simply, create different conceptions because dislocating them or, even, changing the location of respective punctuation in a sentence or a clause of a contract may alter the meaning of that sentence or that clause. For example, the meaning of this phrase "including, inter alia" clearly differs with the concept of the displaced form of it, i.e. "inter alia, including"

Similarly, each party to the contract can easily make different concepts by altering a proposition in a simple phrase. Look at the example below:

A- Change **in** the scope of Work

B-Change **of** the scope of Work

The first propositional phrase means that some small changes within the main scope of Work are allowable.

The second one says that the main scope of Work can be totally changed.

Words, phrases and idioms written in a contract can be divided into two major groups containing the group of the general/basic vocabulary and the derivatives (or the made combinations) of them and the group of the words and the terms with specific meanings or professional concepts in various occupations.

The first group consists of those words and vocabulary that create a general/common concept in the minds of the people. For example, the words "home", "workshop", "employee", "Engineering", "News", "people", "street", etc. produce the same images in mind for individuals in a society and when one of them goes to work in speech or writing, a common sense between the "speaker and listener" or "author and reader" can be exchanged. In contrast, the vocabulary is placed in the second group, may denote on different meanings (and sometimes far-fetched). However, their significance among experts in a specific profession (, more or less,) is the same, for example the phrase of **"cost of capital"** and the term **"capital cost"** refer to totally different concepts in the minds of an economist or an accountant while this does not apply for other people.

In commercial contracts, the clear definitions are provided for the key words or phrases that are (, directly,) used in interpretation of the provisions of the written text. The contract definitions are generally adaptive. They express the common sense of the parties of a contract on a word or a phrase

The main purpose of a definition is to achieve clarity without needless repetition. For this reason, "it is unnecessary" to define ordinary words that are used in their usual dictionary meaning. However, it does not mean that these words have no importance in contracts.

The notion of the plain and ordinary meaning of a word sounds fairly straightforward, but it requires a bit more analysis than a reader might expect. When words are strung together to create complete sentences, which eventually become paragraphs, the meaning of a particular word may differ based on its use and the context of the sentence. Thus, experts sometimes have to reference a standard and universally accepted dictionary (literally) to find a more precise definition of a word.

Other than that, There are often a lot of terms used in contracts that absolutely must be ascribed their precise meaning, as understood between the parties at the time that the contract was drafted. This is particularly true in technology, oil industry, finance, and health sciences.

Any contract that deals with intellectual property, technological innovation, special financing, biotechnology, medical devices, research and development, and other related fields, likely involves distinct and specialized information, some of which may even be unique to the parties in the arrangement. In these instances, it is downright unreasonable not to make it perfectly clear what the terms mean, as failing to do so allows a person with little to no familiarity with the subject to become the ultimate arbiter in deciphering its meaning

Sometimes the contract itself must be interpreted without completely relying on the terms contained therein.

The parties' intent when they initially entered into and drafted the contractual agreement and the actions that led to its creation may be based to interpret the final agreement. But it could also be disastrous, as plenty of contract negotiations and drafting rounds are a virtual tug of war, and thus it may not even be clear what each party originally intended

In any case, even in the above situation, words and phrases likewise have a key role.

The second group of words and terminology has specific meanings and private. Only the experts of different occupations are that relatively to an acceptable level can understand the notions and interpretations of this group

On the basis of the contract subject and the scope of work, the words of this group can be divided into the following subgroups:

- The subgroup of words and terminology related to financial, accounting, economic, trade and commerce fields
- The subgroup of words and terminology related to technical ,environmental and scientific themes
- The subgroup of words and terminology related to legal and contractual vocabulary, commonly used and or the like
- When a contract is reviewed, the sight of certain words or phrases may be Uncomfortable or stressful. This uneasy sensation is caused by an overly broad standard of care and the appearance of certain duties that should not be a part of a professional services agreement.
- Studying and understanding the concept of these words or phrases out of an agreement will be helpful for creating a fair space for mind and allocate the risk of wrong perception in an appropriate way.

A few **famous** examples:

- 1) In the phrase of “comply with **all** laws, rules and regulations,” the word “**all**” refers to thousands of laws, rules and regulations that some of them may conflict with another and many are open to interpretation by a public official.

At a minimum, the word “**all**” (in aforesaid phrase) should be replaced with the word “**applicable.**”

- 1) Or similarly, in the phrase of "the contractor shall be responsible for **all** its errors and omissions."

The contractor does not have to be perfect and he may commit unintentional or inadvertent errors. Therefore, The words “**all its**” should be replaced with “**it's negligent.**”

- 1) “**Assure**” or “**Ensure**” imply accuracy is being guaranteed. In the phrase, "during site visits, the contractor shall **ensure** the sub-contractors work is being done in conformance with the construction documents,” the contractor is required to make sure the work is in conformance with the contract documents.

It is not appropriate for the contractor to guarantee the sub-contractor's work. Instead, use a phrase such as **“the contractor shall observe the quality and progress of the sub-contractor's work.”**

- 1) **"Best "**in the following sentences should be deleted and, if appropriate, replaced with **“good.”**

“The firm shall assign its **best** staff to the project,”

“The contractor shall use its **best** judgment”

“The contractor shall use its **best** efforts.”

Because there is only one **“best,”** the design professional should not be agreeing to provide it.

Syntax (the role of sentence structure)

When reading contracts, it is extremely important to pay attention to all grammatical aspects of the document, particular the placement of punctuation marks. Although, at first glance, this would appear to be a minor detail, incorrect usage of punctuation marks can change the entire meaning of a clause or of a contract.

Sentence structure reveals the relationships among words that make a statement. It is one of the most important factors affecting the understanding of a contractual text.

Complexity (including length) and organization (word order) are two aspects of a sentence structure.

Syntax concerns the way that words are arranged into larger units in form of phrases, clauses, and sentences

If the components of a sentence are looked at, it can be said that a sentence consists of a string of words. But if it is looked more closely, it will be easy to see that the words aren't all equal. Instead, they occur in groups.

It's not sometimes very helpful to think of the individual words in isolation.

The meaning of sentences depends on more than the meaning of the individual words they contain. It also depends on the relationships among the ideas conveyed by the words. The order in which these ideas are presented greatly affects the ease with which their relationships can be understood.

Sentences provide us with the framework for the clear written expression of our ideas. The aim in writing is always to write in complete sentences which are correctly punctuated.

Sentences are made up of clauses: groups of words that express a single idea. There are two types of clauses: independent clauses and dependent clauses. Independent clauses can stand alone as complete sentences. A dependent clause needs an independent clause to complete its

meaning. Different types of sentences are made up of different combinations of these two types of clauses.

Sentence structure, in either simple or complex forms, has a large impact on correctly transferring of the concepts and intention of any party of a contract.

Consider the following sentences:

- (a) The company objected to the plans proposed by the contractor.
- (b) The company proposed the plans objected to by the contractor.

The meaning of the sentence in (a) is quite different from that of (b), even though the only difference is the position of the words *objected to* and *proposed*. Although both sentences contain exactly the same words, the words are structurally related to each other differently; it is those differences in structure that account for the difference in meaning."..... **(This thesis continues)**

The above is a brief quotes from "A book entitled analytical techniques to understand the financial regime of trade agreements, financing, investment and oil/petroleum contracts" That by **Mr.Masood Zohdi**, author of a great series of books financial, accounting and economic procedures prevailing in the international oil industry is in the hands of writing

List of books, previously, published by this author:

- 1- Oil accounting, Hydrocarbon contracts accounting and accounting for oil/gas projects
- 2- Step-by-step training on professional techniques and methods in finance, investment and commercial contracts
- 3- Complete dictionary of vocabulary, phrases and terminology of Service, Commercial, Investment and Finance contracts
- 4-The logic of design, compilation, organization and management of petroleum contracts and financing agreements
- 5- The full course of the structure of investment and finance contracts in international oil industry, along with an outline if the financial, accounting, and economic methods applied in them
- 6-Complete set of principles, methods and concepts applied to the project finance and structured finance
- 7- Common patterns of investment in the oil industry and projects financing methods
- 8-Financial and accounting procedures in oil buyback contracts
- 9- Financial and accounting procedures international petroleum contracts
- 10- Financial and accounting procedures Buyback and petroleum contracts
- 11- Investment patterns in Iran
- 12- Capital Analysis for the projects

13- The financial and commercial aspects of buy back contracts in Iranian oil industry (for foreign investors) published by oil ministry for international firms outside of the country.