"*We are not fussed about the contracting process because we will never want to sue the other party anyway*" – some misconceptions *(by Sean Lynch)*

We have heard the above statement uttered in various ways by business people over the years. The comment is "short sighted" for a number of reasons, some of which are as follows:

1. If there was an effective, well written contract containing an appropriate dispute resolution clause, then firstly, the clear and effective wording of the contract will minimise the risk of a dispute arising in the first place, and secondly, if a dispute does arise, the application of alternative dispute resolution processes (which avoid the costly use of the courts or arbitration where possible) could well produce a very favourable, low-cost outcome.
2. From our experience, using a good commercial lawyer to work with you on the wording of the contract often raises risks and issues which neither party contemplated, and which are material to the proposed commercial relationship and related agreement. By identifying and effectively addressing all material risks and issues in the contract, this will minimise the risk of a dispute arising and enhance the working relationship between the parties. Working with a good commercial lawyer will often simply result in clearer and tighter wording under the agreement which is often beneficial for both parties.
3. An obvious downside of "not being fussed about the contracting process" is that the resulting agreement (whether written down or otherwise) leaves you fundamentally exposed on a number of legal and commercial points which may have been easily addressed through reasonable negotiation.
4. Another downside flowing from not addressing the above points may well be a significant claim or other cost incurred that is not foreseen, and which may completely wipe out any margin or profit which you may otherwise had hoped to make on the deal. Worse still, the result may be far greater loss than had ever been contemplated.
5. If the proposed transaction is cross-border internationally, then without effective contract terms, the legal terms contained within various international treaties may well end up applying by default (but which might otherwise be excluded) the application of which might bring about a very different result from that which you intended.
6. Even a very low value sales transaction could present a high legal claims risk depending on the type of product and also the volume of individual sales transactions involved (i.e. selling goods or services to many customers). This is why having binding and effective terms of trade important, especially since "class legal actions" are becoming more common.

Without effective commercial contract terms which are commensurate (in terms of length, wording and cost) to the size, likely risks, and expected gains from the proposed contract, there will often be considerably greater potential risk. The commercial law reports going back through the decades confirm that the cost of documenting a transaction effectively is far less than the cost of going to court, and in fact is likely to avoid most disputes altogether.

For further information or a meeting to discuss your needs, please call +64 9 948 8433 or email admin@lynchandco.co.nz.