



The Contracts (Rights of Third Parties) Law, 2014

The Contracts (Rights of Third Parties) Law, 2014 has been brought into force which provides for the enforcement of contractual terms by third parties (the “Law”).

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The Law brings the Cayman Islands into line with the UK and the US in relation to the ability of a person to enforce rights which are conferred upon him pursuant to a contract to which he is not a party (“third party”), thereby overriding the common law principle that only parties to a contract are able to enforce its terms.

The Law is based on the UK model (the Contracts (Rights of Third Parties) Act 1999 (the “UK Act”) but an important difference between them is that the Law only confers rights on persons who are specifically intended to benefit therefrom, unlike the UK Act which allows a third party to enforce a term of the contract where that term purports to confer a benefit upon him. In this regard, a third party may only enforce a term of a contract pursuant to the Law, if:

- that person is expressly identified in that contract by name, as a member of a class or as answering particular description but the third party need not be in existence when the contract is entered into; and
- that contract expressly provides in writing that such person may enforce the relevant term.

The Law applies to contracts which are made on, before or after 21st May 2014 if they contain, or are amended to include, terms which comply with the Law provided however that a third party may only enforce a right which accrues on or after 21st May 2014. The Law does not apply to certain types of contract such as bills of exchange, promissory notes and memoranda and articles of association.

The Law further provides that parties to a contract may not, by agreement, rescind the contract, or vary it so as to extinguish or vary a third party’s entitlement under that right, without that third party’s consent. However, this is overridden if a contract includes express terms which allow it to be so rescinded or varied by agreement of the parties without the third party’s consent. Any party to a contract governed by Cayman Islands law should give thought to third party consents when granting rights to third parties.

The Law will cure a frequently encountered problem whereby indemnity provisions in, for example, limited partnership agreements, which are extended to cover third parties (such as an investment manager), are currently ineffective.

The uncertainty created by the UK Act’s inclusion of rights purporting to have been conferred led to a practice of generally expressly excluding the effect of the UK Act in contracts. It remains to be seen whether the same approach will be adopted in Cayman Islands governed contracts, notwithstanding that the same uncertainty does not exist in the Law.



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