

Client Memorandum

THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014

June 2014

This law is now effective in the Cayman Islands. In all substantive respects the provisions of the law will be familiar to English lawyers as it follows, in the main, the Contracts (Rights of Third Parties) Act 1999, save the Cayman law requires express wording to opt in.

- A third party who would otherwise under laws of contract not have been in a position to enforce that contract may now do so if sufficiently well identified by name or class or description and if expressly entitled to such third party right.
- Any remedy including damages, injunction and specific performance available for breach of contract is now available to such third party who is, understandably, also subject to and may benefit from any provision in the contract excluding, limiting or exculpating liability. The promisor may plead set off or counterclaim against the third party as if the third party had been a party to the contract.
- A contractual term of an existing contract purporting to grant such third party right is enforceable after 21 May 2014, the effective date. A contract not containing such third party right may be amended after that date to enable enforcement subsequent to that date.
- A third party granted such third party right is required to consent to any rescission or variation of the contract unless the contract otherwise provides.
- Such third party is subject to any submission to arbitration in the contract and, as in the United Kingdom, there are provisions which protect a promisor against double liability.
- Notably, the law does not apply to:
 - the contract contained with the memorandum or articles of association of a company. Absent a specific separate directors agreement, it seems therefore the director will continue to have to rely on a collateral contract;
 - a contract on a bill of exchange, promissory note or other negotiable instrument;
 - a contract of employment against an employee;
 - a contract for carriage of goods;
 - a letter of credit.
- Unlike the position in the UK, express wording will need to be included in the contract to ensure a third party can benefit from these statutory provisions.

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