

Cayman Islands third party rights legislation

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The Contracts (Rights of Third Parties) Act, 2014 (the **Act**) provides a statutory framework permitting contracting parties to allow persons who are not party to contracts governed by Cayman Islands law (or **third parties**), but who are expressed by the terms of the contract as benefiting under them, to enforce provisions of the contract.

The Act is particularly helpful in circumstances where third parties purportedly benefit from, but historically have not enjoyed a statutory right of enforcement of, contractual terms for lack of privity of contract. Previously, the practice was to structure third party rights separately from the main transaction documents. The Act facilitates streamlining by removing the need for a dual step approach to constructing third party rights in transactional arrangements.

Privity of contract diluted

Prior to the introduction of the Act, Cayman law did not recognise third party beneficiaries to a contract, which inevitably raised questions as to what should be the governing law of a contract which specifically conferred rights or benefits on third parties. The Act brought Cayman's law of contract more closely into line with the laws of other major international financial centres, such as New York and London, where many counterparties to arrangements with Cayman entities and other interested persons are based.

The Act reflects in substantive terms England's Contracts (Rights of Third Parties) Act 1999, though with key differences. Unlike the English statute, the Act aims to provide rights for third parties only where the contractual parties agree that the third party may specifically enforce. The English statutory provision whereby a third party may enforce a contractual term where the term 'purports to confer a benefit' on a third party was not adopted. The Cayman statute therefore provides something akin to an 'opt in' system which is intended to provide, among other things, greater certainty as to circumstances in which third parties can enforce contractual provisions.

The Act is consistent with the equivalent English legislation in that the relevant third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description, but need not be in existence when the contract is entered into; accordingly contracts can confer benefits on, for example, companies yet to be incorporated. Where a contract provides for third parties to enjoy rights under the terms of the contract, it follows that the third party would be able to seek all available remedies in seeking to enforce their rights under the contract, subject to any contractual limitations and exclusions.

Practical benefits

The Act creates particular benefits to a range of arrangements. Contractual provisions operating to protect, or conferring benefits on, directors, officers and employees of a party are now directly enforceable at the suit of such persons. Other examples of the benefits of the Act include situations frequently encountered in the sphere of investment funds where fund subscription documents or limited partnership agreements will contain indemnities and other provisions protecting the investment manager or other service providers.

Persons contracting under Cayman law should take care expressly to apply or dis-apply the Act in all arrangements, and note the following key limitations:

- contracts may be amended to include terms which introduce application of the Act, whenever those contracts were/are made;
- where contracts (whenever made) are amended to apply the Act, third parties will only be able to enforce rights which accrue to them under the contract on or after the date of amendment of the contract;
- only rights accruing on or after 21 May 2014 (being the date on which the Act came into force) are enforceable by third parties, whether or not the contract which establishes those rights includes terms which otherwise would satisfy the requirements of the Act.

Case law on the English legislation has a common theme of demanding clarity and specificity in drafting of third party benefit provisions, and this would hold true in respect of the Act and its use in Cayman arrangements.

Contacts

A full list of contacts specialising in corporate law can be found [here](#).

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