

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

(No. 39 of 2001)

ARRANGEMENT OF SECTIONS

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An Act to make provision for the enforcement of contractual terms by third parties.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act may be cited as the Contracts (Rights of Third Parties) Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) Subject to subsection (3), this Act shall not apply in relation to a contract entered into before the end of the period of 6 months from the date of commencement of this Act.

(3) The restriction in subsection (2) shall not apply in relation to a contract which —

(a) is entered into on or after the date of commencement of this Act; and

(b) expressly provides for the application of this Act.

Right of third party to enforce contractual term

2.—(1) Subject to the provisions of this Act, a person who is not a party to a contract (referred to in this Act as a third party) may, in his own right, enforce a term of the contract if —

(a) the contract expressly provides that he may; or

(b) subject to subsection (2), the term purports to confer a benefit on him.

(2) Subsection (1)(b) shall not apply if, on a proper construction of the contract, it appears that the parties did not intend the term to be enforceable by the third party.

(3) The third party shall 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.

(4) This section shall not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages,

injunctions, specific performance and other remedy shall apply accordingly) and such remedy shall not be refused on the ground that, as against the promisor, the third party is a volunteer.

(6) Where a term of a contract excludes or limits liability in relation to any matter, references in this Act to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

(7) In this Act, in relation to a term of a contract which is enforceable by a third party —

“promisee” means the party to the contract by whom the term is enforceable against the promisor;

“promisor” means the party to the contract against whom the term is enforceable by the third party.

Variation and rescission of contract

3.—(1) Subject to this section, where a third party has a right under section 2 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or vary it in such a way as to extinguish or alter the third party’s entitlement under that right, without his consent if —

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term (whether or not the third party has knowledge of its precise terms); or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it (whether or not the third party has knowledge of its precise terms).

(2) The assent referred to in subsection (1)(a) —

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until it is received by him.

(3) Subsection (1) is subject to any express term of the contract under which —

- (a) the parties to the contract may by agreement rescind or vary the contract without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a), (b) and (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court or arbitral tribunal may, on the application of the parties to the contract, dispense with his consent if it is satisfied that —

- (a) his consent cannot be obtained because his whereabouts cannot reasonably be ascertained; or
- (b) he is mentally incapable of giving his consent.

(5) The court or arbitral tribunal may, on the application of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if it is satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term of the contract.

(6) If the court or arbitral tribunal dispenses with a third party's consent, it may impose such conditions as it thinks fit, including a condition requiring the payment of compensation to the third party.

(7) The jurisdiction conferred on the court by subsections (4), (5) and (6) shall be exercisable by both the High Court and a District Court.

Defences, etc., available to promisor

4.—(1) Subsections (2) to (5) shall apply where proceedings for the enforcement of a term of a contract are brought by a third party in reliance on section 2.

(2) The promisor shall have available to him, by way of defence or set-off, any matter that —

- (a) arises from or in connection with the contract and is relevant to the term; and

(b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(3) The promisor shall also have available to him, by way of defence or set-off, any matter if —

(a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and

(b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(4) The promisor shall also have available to him —

(a) by way of defence or set-off any matter; and

(b) by way of counterclaim any matter not arising from the contract,

that would have been available to him by way of defence or set-off or by way of counterclaim against the third party, as the case may be, if the third party had been a party to the contract.

(5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where, in any proceedings brought against him, a third party seeks to enforce a term of a contract (including, in particular, a term purporting to exclude or limit liability) in reliance on section 2, he may not do so if he could not have done so (whether by reason of any particular circumstances relating to him or otherwise) had he been a party to the contract.

Enforcement of contract by promisee

5. Section 2 shall not affect any right of the promisee to enforce any term of the contract.

Protection of promisor from double liability

6. Where under section 2 a term of a contract is enforceable by a third party, and the promisee has recovered from the promisor a sum in respect of —

(a) the third party's loss in respect of the term; or

- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court or arbitral tribunal shall reduce any award to the third party to such extent as it thinks appropriate to take account of the sum recovered by the promisee.

Exceptions

7.—(1) Section 2 shall not confer any right on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument.

(2) Section 2 shall not confer any right on a third party in the case of any contract binding on a company and its members under section 39 of the Companies Act (Cap. 50).

(3) Section 2 shall not confer any right on a third party to enforce any term of a contract of employment against an employee.

(4) Section 2 shall not confer any right on a third party in the case of —

- (a) a contract for the carriage of goods by sea; or
- (b) a contract for the carriage of goods by rail or road, or for the carriage of cargo by air, which is subject to the rules of the appropriate international transport convention,

except that a third party may in reliance on that section avail himself of an exclusion or limitation of liability in such a contract.

(5) In subsection (4) —

“appropriate international transport convention” means —

- (a) in relation to a contract for the carriage of cargo by air, the Convention which has the force of law in Singapore under section 3 of the Carriage by Air Act (Cap. 32A);
- (b) in relation to a contract for the carriage of goods by rail, such Convention which has the force of law in Singapore under such written law as the Minister may by order prescribe; and

- (c) in relation to a contract for the carriage of goods by road, such Convention which has the force of law in Singapore under such written law as the Minister may by order prescribe;

“contract for the carriage of goods by sea” means a contract of carriage —

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order or a corresponding electronic transaction.

(6) For the purposes of subsection (5) —

- (a) “bill of lading”, “sea waybill” and “ship’s delivery order” have the same meanings as in the Bills of Lading Act (Cap. 384); and
- (b) a corresponding electronic transaction is a transaction within section 1(5) of the Bills of Lading Act which corresponds to the issue, indorsement, delivery or transfer of a bill of lading, sea waybill or ship’s delivery order.

Supplementary provisions relating to third party

8.—(1) Section 2 shall not affect any right or remedy of a third party that exists or is available apart from this Act.

(2) Section 2(2) of the Unfair Contract Terms Act (Cap. 396) (exclusion of or restriction on liability for negligence) shall not apply where the negligence consists of the breach of an obligation arising from a term of a contract and the person seeking to enforce it is a third party acting in reliance on section 2.

(3) In section 6 of the Limitation Act (Cap. 163), the references to an action founded on a contract shall include references to an action brought in reliance on section 2 relating to a contract.

(4) A third party shall not, by virtue of section 2(5) or 4(4) or (6), be treated as a party to the contract for the purposes of any other written law.

Arbitration provisions

9.—(1) Where —

- (a) a right under section 2 to enforce a term (referred to in this section as the substantive term) is subject to a term providing for the submission of disputes to arbitration (referred to in this section as the arbitration agreement); and
- (b) the arbitration agreement is an agreement in writing for the purposes of the Arbitration Act 2001 or Part II of the International Arbitration Act (Cap. 143A),

the third party shall be treated for the purposes of the Arbitration Act 2001 or the International Arbitration Act, as the case may be, as a party to the arbitration agreement as regards disputes between himself and the promisor relating to the enforcement of the substantive term by the third party.

(2) Where —

- (a) a third party has a right under section 2 to enforce a term providing for one or more descriptions of dispute between the third party and the promisor to be submitted to arbitration (referred to in this section as the arbitration agreement);
- (b) the arbitration agreement is an agreement in writing for the purposes of the Arbitration Act 2001 or Part II of the International Arbitration Act (Cap. 143A); and
- (c) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of the Arbitration Act 2001 or the International Arbitration Act, as the case may be, as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.
