

Contracts (Rights of Third Parties) Bill to be introduced to LegCo

The Government will introduce the Contracts (Rights of Third Parties) Bill into the Legislative Council to implement in full the recommendations of the Law Reform Commission of Hong Kong (LRC) to reform the doctrine of privity of contract and to enhance the contractual law regime in Hong Kong.

A spokesman for the Department of Justice said today (February 26) that one aspect of the doctrine of privity is that a person cannot acquire and enforce rights under a contract to which the person is not a party, preventing effect from being given to the contracting parties' intention to benefit a third party.

The doctrine of privity has long been criticised as artificial and contrary to the parties' intention to benefit a third party. As such, the court may need recourse to devices such as agency and trust to allow a third party to enforce a right conferred on the party, or in some other cases, a third party may have to resort to a large number of separate contracts with extra cost, complexity and inconvenience.

The LRC published the report on "Privity of Contract" in September 2005 recommending a reform of the doctrine of privity of contract by way of a detailed legislative scheme.

The Bill sets out the limits within which a third party can enforce a contract. It provides for a two-limb test and the satisfaction of either limb will permit a third party who is not a party to the contract to enforce it. Parties to a contract can also expressly exclude the application of this new statutory scheme in their contract.

The Bill also provides that a third party must be expressly identified by name, as a member of a class or as answering a particular description. Rights may be conferred on a third party who is not in existence when the contract is entered into.

To strike a balance between the contracting parties' freedom to alter the terms of the contract in accordance with their intention on the one hand and the interests of a third party who may suffer as a result of the alteration on the other, the Bill provides for the

circumstances in which a third party's rights are "crystallised", so that when those circumstances exist, the contracting parties may not rescind the contract or vary it in a way that affects the third party's rights. The Bill also provides for defences, set-offs and counterclaims to be available to a promisor in proceedings brought by a third party and protects a promisor against double liability.

The Bill also introduces arbitration clauses which provide that if a third party's right to enforce a term of a contract is subject to an arbitration agreement, the third party is treated as a party to the arbitration agreement for the purposes of enforcement of the term, unless on a proper construction of the contract, the third party is not intended to be so treated.

The Bill will be introduced into the Legislative Council for first reading on March 26.

Ends/Wednesday, February 26, 2014