

**Speech by the Secretary for Justice
The Honourable Rimsky Yuen, SC
in the Legislative Council on 26 November 2014**

**Resumption of the Second Reading Debate on
the Contracts (Rights of Third Parties) Bill**

Mr. President,

The Contracts (Rights of Third Parties) Bill I introduced to this Council in March this year has been examined in detail by the Bills Committee chaired by Mr. Hon. Kenneth Leung. I would take this opportunity to express my gratitude to Mr. Hon. Kenneth Leung, members of the Bills Committee and deputations for their valuable opinions.

2. As I said when introducing the Bill into this Council, the Bill seeks to implement the recommendations of the Report on Privity of Contract published by the Law Reform Commission of Hong Kong in September 2005, so as to reform the common law doctrine of privity of contract.

3. Under the common law doctrine of privity, a person not a party to a contract (i.e. a "third party") cannot acquire or enforce rights under the contract. This doctrine has long been criticized as incapable of giving effect to contracting parties' intention to confer benefit a third party and thereby giving rise to injustice or inconvenience in respect of the third parties' rights.

4. The Bill enables contracting parties to confer enforceable contractual rights on a third party if they so wish. Simply put, if it is the contracting parties' intention to allow a third party to enforce the contract, the Bill would give effect to the contracting parties' intention and provide

the third party with a more direct legal means to enforce the contract. If the contracting parties do not wish the Bill to be applicable to the contract, they would be at liberty to make such a provision in the contract.

5. The Bill will further enhance Hong Kong's contractual law regime and align it with those of the other major common law jurisdictions, including England, Australia and New Zealand.

Proposed amendments

6. I shall move a couple of Committee Stage Amendments ("CSAs") later. The CSAs have all been endorsed by the Bills Committee. I will briefly outline them.

7. Clause 3(2) of the Bill excludes a number of types of contracts from the application of the new legislative scheme. One such type of contracts is a covenant relating to land which includes a deed of mutual covenant. Since a deed of mutual covenant may contain provisions not relating to land, we propose to amend Clause 3(2) so as to clarify that all provisions in a deed of mutual covenant as well as a covenant relating to land are to be excluded from the application of the Bill.

8. In addition, we propose a very minor amendment to the English text of Clause 8(2) so as to improve the presentation of that sub-clause.

Conclusion

9. President, as I pointed out earlier, the Bill, when enacted, will enhance Hong Kong's contractual law regime. The contents of the Bill will be further improved with our proposed amendments.

10. With these remarks, I urge Members to support the Second Reading of the Contracts (Rights of Third Parties) Bill and endorse the amendments proposed by the Administration at the subsequent Committee Stage.

11. Thank you, Mr. President.

