

**Contracts (Rights of Third Parties) Act
(CHAPTER 53B)**

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**CONTRACTS (RIGHTS OF THIRD PARTIES) ACT
(CHAPTER 53B)**

(Original Enactment: Act 39 of 2001)

REVISED EDITION 2002

(31st July 2002)

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

[1st January 2002]

Short title and application

1.—(1) This Act may be cited as the Contracts (Rights of Third Parties) Act.

(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 1st January 2002.

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

- (a) is entered into on or after 1st January 2002; 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.