

**Consumer Council Submission to Bills Committee on Contracts (Rights of Third Parties) Bill on 7 May 2014**

1. The Consumer Council (the Council) is pleased to provide views to the Legislative Council Bills Committee regarding the Contracts (Rights of Third Parties) Bill. The Council has reservations as to whether the Bill in its present form can practically improve the position of consumer third party.
2. According to the Bill, a consumer third party will only be entitled to enforce a benefit conferred on him under a contract in very limited circumstances.
3. Under Clause 4 of the Bill, a consumer third party may enforce a term of contract where the contract expressly provides that he may do so; or the term purports to confer on him a benefit. Further, he has to fulfill the requirement of identification, i.e. to be expressly identified by name, as a member of a class or as answering a particular description in a contract.
4. This Council observes that in most consumer transactions, the intention to confer benefit on a third party may not be manifested when the parties entered into the contract and the intended beneficiary may not be identified as required.
5. Under the Bill, the parties are free to agree on whether a benefit under the contract is to be conferred on a third party or if the benefit is to be so conferred, whether it is to be enforceable by him. This Council realizes that this purports to uphold the principle of freedom of contract. However, it is envisaged that traders may avoid widening their potential liability on a breach of contract by avoiding fulfilment of the requirements under Clause 4 in their standard consumer contracts to exclude enforcement by consumer third party.
6. It follows that most consumer third parties will be left outside the ambit of the proposed legislation. Unlike some other jurisdictions, currently there is no consumer protection legislation in Hong Kong, comprehensive or specific, for consumers to turn to for direct and convenient remedy for damage, injury or loss suffered due to breach of a contract to which he is not a party.
7. In the circumstances, this Council is of the view that the proposed two-limb test of enforceability under Clause 4 of the Bill should be relaxed specifically for consumer third party. This Council notes that the Law Reform Commission has considered the issue and took the view that specific concern on consumer protection could not be addressed through this kind of general reform on law of contract.
8. Nevertheless, in light of the fact that (1) there will not be any comprehensive consumer protection legislation in the near future in Hong Kong; and (2) the proposed two-limb test mentioned above may not cover all situations involving consumer third parties, it is respectfully submitted that the Bill should include measures for consumer protection specifically. In such connection, this Council welcomes any further suggestions from the Department of Justice. At the same time, we reiterate our view that one of the possibilities to achieve this end is to formulate a specific enforceability test, along the line of Option 8 or Option 9 mentioned in Paragraph 4.31 of the Report

on "Privity of Contract" published by the Law Reform Commission in September 2005, as stated below:

"a third party may enforce a contract on which he justifiably and reasonably relies, regardless of the intention of the parties; or

a third party may enforce a contract which actually confers a benefit on him, regardless of the purpose of the contract or the intention of the parties."

Consumer Council  
2 May 2014