



THE STATUTES OF THE REPUBLIC OF SINGAPORE

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

2020 REVISED EDITION

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Contracts (Rights of Third Parties) Act 2001

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

[1 January 2002]

Short title and application

1.—(1) This Act is the Contracts (Rights of Third Parties) Act 2001.

(2) Subject to subsection (3), this Act does not apply in relation to a contract entered into before the end of the period of 6 months from 1 January 2002.

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

- (a) is entered into on or after 1 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 (called in this Act a third party) may, in the third party's own right, enforce a term of the contract if —

- (a) the contract expressly provides that the third party may; or
- (b) subject to subsection (2), the term purports to confer a benefit on the third party.

(2) Subsection (1)(b) does 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 must 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 does 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 a third party's right to enforce a term of the contract, there is to be available to the third party any remedy that would have been available to the third party in an action for breach of contract if the third party had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other remedy apply accordingly) and such remedy must 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 are to be construed as references to the third party availing himself, herself or itself 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 the contract in such a way as to extinguish or alter the third party's entitlement under that right, without the third party's consent if —

- (a) the third party has communicated the third party's 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 the term (whether or not the third party has knowledge of its precise terms).

(2) The assent mentioned in subsection (1)(a) —

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

(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 such consent if the court or tribunal is satisfied that —

- (a) the consent cannot be obtained because the third party's whereabouts cannot reasonably be ascertained; or

(b) the third party is mentally incapable of giving the third party's 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) is exercisable by both the General Division of the High Court and a District Court.

[40/2019]

Defences, etc., available to promisor

4.—(1) Subsections (2) to (5) 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 has available to the promisor, 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 the promisor by way of defence or set-off if the proceedings had been brought by the promisee.

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

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

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

- (4) The promisor also has available to the promisor —
- (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 the promisor 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 a third party, the 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, the third party may not do so if the third party could not have done so (whether by reason of any particular circumstances relating to the third party or otherwise) had the third party been a party to the contract.

Enforcement of contract by promisee

5. Section 2 does 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 must 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 does 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 does 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 1967.

(3) Section 2 does not confer any right on a third party in the case of any registration document of a limited liability partnership registered under the Limited Liability Partnerships Act 2005 or any limited liability partnership agreement as defined in that Act.

[5/2005]

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

(5) Section 2 does 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 the third party of an exclusion or limitation of liability in such a contract.

(6) In subsection (5) —

“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 1988;

(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 or sea waybill; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order.

[5/2021]

(7) For the purposes of subsection (6), “bill of lading”, “sea waybill” and “ship’s delivery order” have the meanings given by the Bills of Lading Act 1992.

[5/2021]

Supplementary provisions relating to third party

8.—(1) Section 2 does 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 1977 (exclusion of or restriction on liability for negligence) does 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 1959, the references to an action founded on a contract include references to an action brought in reliance on section 2 relating to a contract.

(4) A third party is not, by virtue of section 2(5) or 4(4) or (6), 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 (called in this section the substantive term) is subject to a term providing for the submission of disputes to arbitration (called in this section the arbitration agreement); and
- (b) the arbitration agreement is an agreement in writing for the purposes of the Arbitration Act 2001 or Part 2 of the International Arbitration Act 1994,

the third party is treated for the purposes of the Arbitration Act 2001 or the International Arbitration Act 1994 (as the case may be) as a party to the arbitration agreement as regards disputes between the third party 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 (called in this section the arbitration agreement);
- (b) the arbitration agreement is an agreement in writing for the purposes of the Arbitration Act 2001 or Part 2 of the International Arbitration Act 1994; and
- (c) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party is, if the third party exercises the right, treated for the purposes of the Arbitration Act 2001 or the International Arbitration Act 1994 (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 treated as having been so immediately before the exercise of the right.

LEGISLATIVE HISTORY

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Act 39 of 2001 — Contracts (Rights of Third Parties) Act 2001

Bill	:	36/2001
First Reading	:	25 September 2001
Second and Third Readings	:	5 October 2001
Commencement	:	1 January 2002

2. 2002 Revised Edition — Contracts (Rights of Third Parties) Act (Chapter 53B)

Operation	:	31 July 2002
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3. Act 5 of 2005 — Limited Liability Partnerships Act 2005

(Amendments made by section 60(1) read with item (5) of the Sixth Schedule to the above Act)

Bill	:	64/2004
First Reading	:	19 October 2004
Second and Third Readings	:	25 January 2005
Commencement	:	11 April 2005 (section 60(1) read with item (5) of the Sixth Schedule)

4. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019

(Amendments made by section 28(1) read with item 28 of the Schedule to the above Act)

Bill	:	32/2019
First Reading	:	7 October 2019
Second Reading	:	5 November 2019
Notice of Amendments	:	5 November 2019
Third Reading	:	5 November 2019
Commencement	:	2 January 2021 (section 28(1) read with item 28 of the Schedule)

5. Act 5 of 2021 — Electronic Transactions (Amendment) Act 2021

(Amendments made by section 10 of the above Act)

Bill	:	1/2021
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First Reading	:	4 January 2021
Second and Third Readings	:	1 February 2021
Commencement	:	19 March 2021 (section 10)

Abbreviations

C.P.	Council Paper
G.N. No. S (N.S.)	Government Notification Number Singapore (New Series)
G.N. No.	Government Notification Number
G.N. No. S	Government Notification Number Singapore
G.N. Sp. No. S	Government Notification Special Number Singapore
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian Subsidiary Legislation)
M. Act	Malayan Act/Malaysia Act
M. Ordinance	Malayan Ordinance
Parl.	Parliament
S.S.G.G. (E) No.	Straits Settlements Government Gazette (Extraordinary) Number
S.S.G.G. No.	Straits Settlements Government Gazette Number

COMPARATIVE TABLE
CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2002 Ed.
7—(3)	7—(2A)
(4)	(3)
(5)	(4)
(6)	(5)
(7)	(6)