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New Law passed to modify contract law in the Cayman Islands

The Contracts (Rights of Third Parties) Law, 2014 (the "**Law**") has now been passed into law in the Cayman Islands and is expected to enter into force shortly. The Law will grant to one or more persons who are not parties to a contract (each a "**Third Party**") the ability to enforce rights and benefits expressly granted to the Third Party in the contract.

Why is the Law significant?

Currently, under the common law applicable to the Cayman Islands, a person must be party to a Cayman law governed contract in order to be able to enforce the provisions of that contract. This applies even where the parties to the contract clearly intended that a Third Party should have rights under the contract. Under the Law, a Third Party will be able to enforce a contractual term granting rights to that Third Party, provided that the contract specifically provides in writing that the Third Party may enforce the relevant contractual term (the "**Opt-in Condition**"). A term of a contract purporting to confer a benefit on a Third Party will not in itself be sufficient to enable the Third Party to enforce the term. The Opt-in Condition must be met. Only terms which are expressed in writing in the contract to be capable of enforcement by the Third Party will be so enforceable.

The Law will apply to contractual rights and benefits capable of being enforced by a Third Party, including limitation of liability provisions, indemnities and exculpation clauses. In the investment funds context, the new Law is expected to be particularly beneficial in dealing with indemnity and exculpation provisions of limited partnership agreements and shareholders agreements which commonly seek to benefit a wider class of persons than the parties to the agreement itself (e.g. investment manager, each of its affiliates, and each officer, director, employee, agent, stockholder, partner or member thereof).



The new Law should remove the need for separate agreements to deal with indemnity and exculpation provisions.

Identifying the Third Party

Under the Law, in order for a Third Party, in his own right, to enforce a term of the contract, the Third Party must be expressly identified in the contract by name, as a member of a class or as answering a particular description, which includes a person nominated or otherwise identified pursuant to the terms of the contract. However the Third Party need not be in existence when the contract is entered into.


Application

The Law will apply to any contract which seeks to confer benefits or rights capable of being enforced by a Third Party. However the Law will not apply to certain contracts (e.g. contract on a bill of exchange; promissory note; or other negotiable instruments; claims against employees under employment contracts; contracts for carriage of goods by sea, road, or air; and letters of credit). Similarly, the Law will not apply in respect of either the Memorandum of Association of a Cayman company or the Articles of Association of a Cayman company which are statutory contracts binding on a Cayman company and its shareholders. Accordingly, a Director or officer of a Cayman company will not be able to rely on the Law to enforce the indemnification provisions typically placed in the Articles of Association of a company in favour of the Director, officer, and their respective heirs, executors, administrators, and personal representatives to be indemnified out of the assets of the company from and against all actions, proceedings, costs, charges, etc. which is incurred or sustained in the execution of their duties.

Contracts made prior to the Law coming into force may be amended to (i) confer benefits on a Third Party, and (ii) to include the Opt-in Condition. However a Third Party will only be able to enforce a right which accrues on or after the date on which the contract is amended.

Enforcement

Where the Third Party seeks to enforce rights under the contract, 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, will be so available. The rules of contract law relating to damages, injunctions, specific performance, and other relief will also apply. Consequently, the Third Party will have no greater rights in respect of enforcing the contract than a party to the contract.

The Law also contains provisions relating to double recovery and relating to the contracting parties varying the contract subject to the assent of the Third Party.

Cayman to introduce new regime for registration and licensing of Directors

The Cayman Islands Government has published a new Bill that will require all directors, whether Cayman Islands resident or non-resident, of "Covered Entities" to register with the Cayman Islands Monetary Authority ("CIMA"). Covered Entities are: (i) mutual funds regulated by CIMA and (ii) companies which maintain a registration as an Excluded Person under the Securities Investment Business Law (e.g. investment managers and investment advisors). In addition to registration there will also be a licensing regime. The proposal is that a "Professional Director" (that is, a natural person who holds twenty (20) or more of directorships of Covered Entities will need to be licensed by CIMA and will be subject to enhanced regulatory requirements. Corporate directors of Covered Entities, irrespective of directorship numbers held, will also need to be licensed by CIMA.

A copy of the Directors Registration and Licensing Bill, 2014 can be viewed **here**.

A detailed briefing note will be issued on introduction of the new Directors Registration and Licensing Law.

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