

19th December, 2012

Miss Deneb Cheung
Legal Policy Division
Department of Justice
1st Floor, High Block
Queensway Government Offices
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Hong Kong

Dear Miss Cheung

Consultation on Contracts (Rights of Third Parties) Bill 2013

The Hong Kong General Chamber of Commerce is grateful for the opportunity to comment on proposals regarding reforms to the common law doctrine of privity of contract.

We feel that the details given in the consultation to be insufficient for an informed response especially in the absence to a proper and thorough cost-benefit analysis on the likely effects as a result of implementing recommendations by the Law Reform Commission.

For example, there is the issue of whether all the appropriate safeguards could be adequately identified and documented to avoid aspects of speculative or nuisance litigation. By allowing a third party to enforce a contract which purports to confer a benefit on that party, this would appear to give third parties the right to enter into litigation on a contract in which their benefit is no more than purported. From that, it is a simple jump to an insurance contract in which the insured party might find itself facing the obligation to share the available insurance money with a third party.

We do not feel that a suitable solution is merely to provide contract parties the right to exclude waiver of the common law doctrine of privity of contract for the following two reasons:-

- i) It is distinctly possible that the parties will simply forget to exclude the waiver, or fail to exclude it in the course of settling a contract on practical commercial terms, without that meaning that they actually accept third party rights. Relying on the contracting parties' "manifest intention", in accordance with Objective 2 of the Explanatory memorandum, does not constitute a clear or adequate fail safe provision.
- ii) In many cases the fact is that one party's entitlement to a contract is materially stronger than the other, and is able to actually or effectively dictate terms to the other party, e.g. in the form of printed conditions which the other party is required to accept if it wishes to enter into the contract.

Given the need to address such issues of unintended consequences we would like to suggest that a detailed and rigorous regulatory impact assessment be carried out before re-consulting the Chamber and other stakeholders on any proposed legislative changes.

Yours sincerely

Shirley Yuen
CEO