

## The Impact of the Contracts (Rights of Third Parties) Bill on Employers and Employees

Do you ever enter into agreements with any union? Do you ever outsource the provision of benefits to employees through a service provider? Do you provide benefits to dependants or associates of your employees? If so then you may need to change some of your agreements.

In a [previous update](#), we looked at the risks and opportunities for employers under the Contracts (Rights of Third Parties) Bill.

This update considers the practical impact of such Bill on your workplace related agreements and suggests certain sample clauses you may wish to consider including in such agreements when the Bill becomes law.

Warning: The following sample clauses are intended for reference only and will always need to be adapted to suit a particular situation. We do not recommend your simply including the clauses in any agreement without taking specific advice.

The changes considered below are from the employer's perspective. As such they seek to:

- increase the ability of a group company to enforce restrictions against an employee (paragraph A below), and
- reduce the ability of an employee (or any person through an employee) to bring a claim against a group company or other party (paragraphs B, C and D below).

In effect we are looking to protect the employer.

### A. Enabling group companies (as third parties) to enforce agreements between an employee and the employer

The following clause will enable group companies to enforce obligations which the employee has agreed only with the employer. This wording *only* works in an agreement which is separate from the employment

contract itself (for example a Separation Agreement, a Confidentiality Agreement or a Restrictive Covenant Agreement).

#### SAMPLE CLAUSE:

*“This Agreement is entered into by the Employer for itself and for each company in the Employer’s Group with the intention that each such company will be entitled to enforce the terms of this Agreement directly against the Employee as envisaged by the Contracts (Rights of Third Parties) Ordinance.”*

### B. Avoiding an employee (as a third party) being able to bring a claim against the employer due to an agreement between the employer and another party

This clause will operate to avoid any employee being able to claim against the employer (or any group company) due to an agreement between the employer and a third party (for example, an agreement between the employer and a union or between the employer and a provider of employee benefits).

#### SAMPLE CLAUSE:

*“No person other than a party to this Agreement will have any right to enforce any of the terms of this Agreement against the Employer (or any company in the Employer’s Group). In particular, no employee of any company in the Employer’s Group will have any rights under this Agreement against any company in the Employer’s Group as a result of the Contracts (Rights of Third Parties) Ordinance.”*

## C. Avoiding an employee being able to claim against other parties referred to in any agreement with the employee

This clause will stop an employee from being able to bring a claim against any other party mentioned in an agreement with the employee. Such agreement could be the employment contract, but could also be (for example) a share grant award, a secondment agreement or any other agreement.

### SAMPLE CLAUSE:

*“Notwithstanding the Contracts (Rights of Third Parties) Ordinance, the Employee will have no right to enforce this Agreement against any party other than a party to this Agreement.”*

## D. Avoiding any associate of an employee being able to bring a claim against other parties referred to in any agreement with themselves

As the Bill could be used to enable dependants or associates of an employee to bring claims against an employer, the aim of the following sample clause is to avoid two things:

- i. the employee being able to claim against a parent or sister company of the employer;
- ii. any third party being able to claim against the employer (or any other person) for benefits which may be provided to a relative of an employee (e.g., medical benefits).

### SAMPLE CLAUSE:

*“No one other than a party to this Agreement will have any right to enforce any of the terms in this*

*Agreement against another party to their Agreement. In particular, no person or class of persons referred to in this Agreement (or their respective successors or assigns) as being entitled (actually, prospectively or contingently) to benefits due to his or her (or their) relationship with one party to this Agreement will have any rights against another party to this Agreement or any associate of such party under the Contracts (Rights of Third Parties) Ordinance.”*

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