



# Contracts and the rights of third parties - new developments in Ireland

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Introduced as a Private Members Bill, the introduction of the Law Reform (Contracts) Bill 2024 to Ireland's Oireachtas in March 2024 is a step towards aligning Irish contract law with evolving jurisprudence around the enforceability of third-party rights in contracts.

## How will it work?

That a benefit may be conferred on and enforced by a third party to a contract is recognised at common law in many other common law jurisdictions (for example South Africa among others), through the *stipulatio alterii* principle, which originates from Roman law and allows a third party to benefit from a contract they are not themselves a party to. This principle enables one party to make a promise to another that directly benefits a third party, who then acquires the right to enforce the benefit conferred upon them by the contract, even though they were not a party to the original agreement. The *stipulatio alterii* principle was introduced into the law of England and Wales in 1999 by means of the Contracts (Rights of Third Parties) Act 1999.

The traditional doctrine of privity of contract holds that only those who are parties to a contract are entitled to enforce its terms or are subject to its burdens. However, in relation to benefits, this principle has gradually been eroded both by statutory reforms and judicial decisions across common law jurisdictions, recognizing the practical realities of modern commerce and the often complex webs of relationships it weaves, which frequently intend to confer benefits on non-parties.

As a Private Members Bill, the Irish Bill's journey through the legislative process will be arduous due to its origin outside of government. The nature of its introduction may affect its passage, and it is likely to be subjected to more rigorous scrutiny as it progresses through the legislative process in Ireland.

## Synopsis of the Proposed Changes

The Bill seeks to introduce several changes to the current application of contract law in Ireland, focusing on the rights of third parties, allowing a third party to enforce a term of the contract if the contract expressly provides for it, or the term confers a benefit on them, provided the contract does not explicitly state otherwise. This marks a departure from the strict privity rule, allowing parties to a contract to intentionally bestow enforceable rights on third parties.

The Bill also introduces conditions under which the contracting parties cannot vary or rescind the contract to the detriment of a third party's rights without the third party's consent, especially where the third party has relied upon these rights. This provision aims to protect the legitimate expectations of third parties acting on the faith of the contract.

The Bill sets out the defences available to a promisor against enforcement by a third party, ensuring that the promisor is not unduly prejudiced by the extension of rights to third parties. It maintains a balance by allowing the promisor to raise defences that would have been available if the contract had been enforced by a promisee. It safeguards promisors from double liability, ensuring that any recovery by the promisee for the third party's loss or expense is accounted for in any subsequent enforcement by the third party. This provision addresses potential concerns about unfairness or unjust enrichment arising from the new third-party rights.

## Summary

In conclusion, the Law Reform (Contracts) Bill 2024 seeks to alter Irish contract law, allowing a third party to a contract to enforce benefits conferred on them by a contract to which they are not a party. This would bring Irish law into closer alignment with the principles recognized in other common law jurisdictions and would reflect a more nuanced understanding of the realities of contemporary contractual relationships. As a Private Members Bill, however, the Bill may well not be passed in its present form, if it becomes law at all. For queries about this Bill and any related matters please contact a member of our Corporate team via their contact details below.

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