

CONTRACTS ACT, 1960 (ACT 25)

As amended by

VOLTA RIVER PROJECT (SUPPLEMENTARY PROVISIONS) ACT, 1962

(ACT 96)¹

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First Schedule to Act 96

THE TWENTY-FIFTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE CONTRACTS ACT, 1960

AN ACT to amend the law of Contract and to replace certain Imperial enactments.

DATE OF ASSENT: 22nd December, 1960

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

PART I—FRUSTRATION OF CONTRACTS

Section 1—Adjustment of Rights and Liabilities of Parties to Frustrated Contracts.

(1) Where a contract to which this Part applies has become impossible of performance or been otherwise frustrated and the parties thereto have for that reason been discharged from the further performance of the contract the following provisions of this section shall, subject to sections 2 and 3 of this Act, have effect in relation thereto.

(2) Subject to subsection (3), all sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Part referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him, and in the case of sums so payable, cease to be so payable.

(3) Where a party has incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may allow him to recover or to retain out of any sum received by him under the contract, such amount (if any), not exceeding the expenses so incurred or the total sum payable to him under the contract, as the Court may consider just having regard to all the circumstances of the case.

(4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of those provisions, include such sums as appear to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by that party.

(5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the Court shall not take into account any sums which have, by reason of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

Section 2—Severance of Frustrated Contract.

Where it appears to the Court that a part of any contract to which this Part applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 1 of this Act as only applicable to the remainder of that contract.

Section 3—Parties may Contract Out of Part I.

Where any contract to which this Part applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for that provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the Court shall give effect to that provision and

shall only give effect to the provisions of this Part to such extent, if any, as appears to the Court to be consistent with that provision.

Section 4—Application of Part I.

(1) This Part applies to contracts made before or after the commencement of this Act, in respect of which the time of discharge is after the commencement of this Act.

(2) This Part does not apply—

(a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea; or

(b) to any contract of insurance.

PART II—THIRD PARTY RIGHTS

Section 5—Provision in Contract for Benefit of Third Party.

(1) Any provision in a contract made after the commencement of this Act which purports to confer a benefit on a person who is not a party to the contract, whether as a designated person or as a member of a class of persons, may, subject to the provisions of this Part, be enforced or relied upon by that person as though he were a party to the contract.

(2) Subsection (1) does not apply to—

(a) a provision in a contract designed for the purpose of resale price maintenance, that is to say, a provision whereby a party agrees to pay money or otherwise render some valuable consideration to a person who is not a party to the contract in the event of the first-mentioned party selling or otherwise disposing of any goods, the subject matter of the contract, at prices lower than those determined by or under the contract; or

(b) a provision in a contract purporting to exclude or restrict any liability of a person who is not a party thereto.

Section 6—Rights of Third Party not to be Altered, Etc., Without His Consent but Subject to Equities.

Where under the provisions of section 5 of this Act a person who is not a party to a contract is entitled to enforce or rely on a provision in the contract—

(a) no variation or rescission of the contract shall prejudice that person's right to enforce or rely on the provision if he has acted to his prejudice in reliance thereon, unless he consents to the variation or rescission; and

(b) subject to paragraph (a), any party against whom the provision is sought to be enforced or relied on shall be entitled to rely on or to plead by way of defence, set-off, counterclaim or otherwise any matter relating to the contract which he could have so relied on or pleaded if the provision were sought to be enforced or relied upon by the other party to the contract.

Section 6A—Sections 5 and 6 of Act 25 not to Apply to Certain Agreements.

The provisions of sections 5 and 6 of the Contracts Act, 1960 (Act 25) shall not apply to the agreements specified in the First Schedule hereto, except as otherwise expressly provided therein.

Section 7—Assignment of Legal Rights.

(1) Subject to any rule of law, and subject to any contrary intention appearing from any transaction giving rise to any legal rights, a person may, after the commencement of this Act, assign a legal right to another person as hereinafter specified.

(2) An assignment, whether given for consideration or not, of a vested legal right, transfers the full right and interest therein to the assignee and extinguishes the right and interest therein of the assignor if—

(a) it is absolute and not by way of charge only; and

(b) it is in writing and is signed by the assignor or his agent; and

(c) written notice thereof is given to the debtor or other person against whom the right is enforceable.

(3) A purported assignment of a conditional right operates as a promise to assign the right if and when the condition occurs.

(4) An assignment, whether given for consideration or not, is valid notwithstanding that it does not comply with all or any of the requirements of subsection (2) but—

(a) no right so assigned shall be enforced or relied upon against the debtor or other party against whom the right is enforceable unless the assignor is a party to any proceedings in which it is sought to be enforced or relied upon, or unless the Court is satisfied that it would be impossible or impracticable so to join the assignor; and

(b) no such assignment shall prejudice the debtor or other person against whom the right is enforceable unless he has written notice thereof.

(5) Where there are two or more assignments in respect of the same debt or right, a later assignee shall have priority over an earlier assignee if the debtor or other person liable had not received written notice of the earlier assignment at the time when the later assignment was made.

(6) A debtor or other person against whom a right is enforceable is entitled as against any person to whom the debt or other right is assigned, to rely on or plead by way of defence, set off, counterclaim or otherwise, any matter relating to the right which he could have so relied on or pleaded against the assignor at the time when he received written notice of the assignment.

PART III—CONSIDERATION AND FORMALITIES

Section 8—Certain Contracts to be Valid Despite Lack of Consideration.

(1) A promise to keep an offer open for acceptance for a specified time shall not be invalid as a contract by reason only of the absence of any consideration therefor.

(2) A promise to waive the payment of a debt or part of a debt or the performance of some other contractual or legal obligation shall not be invalid as a contract by reason only of the absence of any consideration therefor.

Section 9—Laws as to Consideration Clarified in Certain Cases.

The performance of an act or the promise to perform an act may be a sufficient consideration for another promise notwithstanding that the performance of that act may already be enjoined by some legal duty, whether enforceable by the other party or not.

Section 10—Consideration Need not Move from Promisee.

No promise shall be invalid as a contract by reason only that the consideration therefor is supplied by someone other than the promisee.

Section 11—Contracts Need not be in Writing Except in Certain Cases.

Subject to the provisions of any enactment, and to the provisions of this Act, no contract whether made before or after the commencement of this Act, shall be void or unenforceable by reason only that it is not in writing or that there is no memorandum or note thereof in writing.

Section 12—Contracts, Etc., of Corporations.

A contract or other transaction entered into on behalf of a corporation may be made, varied or discharged by the corporation's duly authorized representative in the same manner as would be required if the corporation were an individual of full age and capacity.

Section 13—Application of Part III.

This Part applies, subject to section 11 of this Act, to transactions taking place after the commencement of this Act.

PART IV—CONTRACTS OF GUARANTEE

Section 14—Guarantees, Etc., to be in Writing.

(1) Any agreement made before or after the commencement of this Act whereby a person (hereinafter in this Part called "the guarantor") guarantees the due payment of a debt or the due performance of any other obligation by a third party shall be void unless it is in writing and is signed by the guarantor or his agent, or is entered into in a form recognized by customary law.

(2) Any promise or representation made after the commencement of this Act, relating to the character or credit of any third person with the intent that that third person may obtain credit, money or goods, from the person to whom the promise or representation is made, shall be void unless it is in writing and is signed by the party to be charged therewith or his agent.

Section 15—Section Revocation of Continuing Guarantee by Change in Partnership.

(1) A continuing guarantee given to a third person in respect of the transactions of a partnership is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the partnership.

(2) A continuing guarantee given to a partnership is not, in the absence of agreement to the contrary, revoked by any change in the constitution of the partnership.

Section 16—Rights of Guarantor Against Debtor, Etc.

(1) Any guarantor, or any other person being liable together with another for any debt or legal duty, who pays the debt or performs the duty, shall be entitled to have assigned to him any security held by the creditor and to stand in the place of the creditor and use all remedies available to him in respect of the debt or duty.

(2) Nothing in this section shall entitle the guarantor or other person liable together with another to recover from the co-guarantor or other person liable together with him more than his due proportion of the debt.

PART V—CONSEQUENTIAL

Section 17—Contracts, Etc., of The Republic.

This Act applies to contracts and transactions entered into on behalf of the Republic as it applies to other contracts and transactions.

Section 18—Repeals.

Section 6 (3) of the Motor Vehicles (Third Party Insurance) 1958 (No. 42) is repealed.

Section 19—Statutes Ceasing to Apply.

Each statute indicated in the Schedule to this Act shall, to the extent indicated in the third column of the Schedule, cease to apply in Ghana.

SCHEDULE

STATUTES CEASING TO APPLY

Section 19

29 Chas. 2,c.3	Statute of Frauds	Sections 4 (except insofar as relates to any (1677) contract or sale of lands) and 17 (which relates to contracts for the sale of goods to the value of ₵G10 and upwards, sometimes known as section 16).
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9 Geo. 4, c.14	Statute of Frauds Amendment	Section 7.
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(1828)

19 and 20 Vict.,	Mercantile Law Amendment	Sections 3,4 and 5.
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c.97 (1856)

30 and 31 Vict.,	Policies of Assurance	The whole Act.
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c.144 (1867)

FIRST SCHEDULE TO ACT 96

The Master Agreement.

The Power Contract.

The Smelter Site Lease.

The Water Agreement.

The Port Agreement.

The Currency Agreement.

The Voting Trust Arrangements.

The Subscription Agreement.

[Inserted and to be cited as the Volta River Project (Supplementary Provisions) Act, 1962 (Act 96), s.1]