IV.6.14 - Third party rights

(a) The parties to a contract ("promisor" and the "promisee") may confer a contractual right on a third party ("beneficiary") by express or implied agreement, provided that the beneficiary, whether it exists at the time of the agreement or not, is identifiable with adequate certainty. The scope and content of the beneficiary’s right against the promisor is determined by the agreement between promisor and promisee.

(b) The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.

Commentary:

1 Contracts create rights only inter partes, i.e. only between the parties that have concluded the contract. However, due to the Principle of party autonomy, the parties to the contract may agree to confer contractual rights to a third party. That agreement will usually be express, but the intention to benefit the third party may also be implicit in the contract. In the latter case, particular care is required, given that the alleged content of the parties' agreement goes beyond the initial parties to the contract.

2 The third party may be personalized in the parties' agreement, but the agreement may also provide a mechanism or criteria by which the identity of the beneficiary will become known or can be determined by the time performance is due.