the basis that the former's liability shall cease if, when he company is formed, it offers to enter into a replacement contract with the third party. The *Contracts (Rights of Third Parties) Act 1999* does not free the promoter from liability for contracts entered into before a company is formed, but its provisions does allow a person to be given rights in a contract even though they are not party to the contract or not in existence when the contract is made.[27] The third party is thereby assured of contractual commitment from the outset and the promoter is encouraged to speed up the process of incorporation of the company and its takeover of the pre-incorporation contract. When the company is incorporated it will be able to sue and be sued on the contract. The practice is expressly recognised by section 51, with its provision that the promoter is personally liable subject to any agreement to the contrary.

Of course, a promoter may avoid liability under a pre-incorporation contract by refraining from entering into the contract until the company has been incorporated.

A promoter may have expenses s/he incurs during the process of incorporation reimbursed by the company. The only constraints on making of such a gratuitous payment are that is must be appropriately disclosed and the directors will need power to make such payments.

In reality, as the promoter is often either the first/sole director and a major shareholder, the act ensures that these people do not avoid their responsibilities. Section 51 of the CA 2006 is styled towards protecting third parties who contract with promoters, by making the promoters personally liable within pre-incorporation contracts, unless subject to any agreement to the contrary.[28] The promoters do have the opportunity of buying a company 'off the shelf' to ensure they are not personally liable once the company is formed, so although section 51 of the CA 2006 has clarified the law relating to pre-incorporation and promoters responsibilities, there are options should the promoter wish to relieve the pressure of being held liable. The effects of section 51 of the CA 2006 on pre-incorporation contracts are that it must be an express exclusion for the promoter to avoid liability; there is no application where the company exists, but is misnamed; and a promoter may be liable and enforce pre-incorporation contracts, so the third party cannot avoid their liabilities and breach the contract, which is deemed equitable.

[27] Jones, *Introduction to Business Law* (n 15)
[28] The Lawyer and Jurists (2010) *Company Formation, Promoters and Pre-incorporation Contracts* (n 10).