

Third Parties (Rights Against Insurers) Act 2010

A claimant faced with an insolvent defendant can seek to obtain recovery from the defendant's insurers. This is not a straightforward process, however, because the claimant is not a party to the insurance contract; it is a third party. Statute has intervened to help claimants in this situation, and the new Third Parties (Rights against Insurers) Act 2010 (the "2010 Act") finally **came into force on 1 August 2016** making it much easier and cheaper for them to do so.

The 2010 Act applies to claims where both the insured's liability arose and its insolvency proceedings started after 1 August 2016.

BRINGING THE CLAIM

If an insured becomes insolvent, under statute the rights of that insured to an indemnity under a liability insurance policy are transferred to a third party claimant. This means the third party can claim directly against the insurer. Before doing so, however the third party must first establish that the insured is liable to the third party. Only then can the third party enforce the rights under the insurance policy against the insurers.

Before the 2010 Act, this meant that the third party had to obtain a judgment, arbitration award or agreement against the insured before it could bring any claim against the insurer, meaning potentially two sets of costly and time-consuming proceedings. Under the 2010 Act, the third party **only needs to bring one set of proceedings, against the insurer and optionally the insured as well**; both the insured's and insurer's liabilities can be decided in the same action. This should mean a potentially significant saving in time and costs for third parties. It also means that there is no longer a need to take any steps to restore an insured company to the register of Companies House if it has been struck off.

The introduction of the 2010 Act may result in an increase in claims, but those claims should result in a speedier and more cost effective resolution.

GETTING INFORMATION ABOUT THE INSURANCE

A third party faced with an insolvent defendant will want to know whether there is a valid insurance policy in place that will pay out if it brings a claim.

Although a third party had a statutory right to obtain information about a defendant's insurance, before the 2010 Act, it could only obtain that information from someone other than the insured itself after it had already established the insured's liability to it. This meant the third party risked wasting time and money claiming against the defendant only to discover that there was no valid insurance policy to claim against.

Under the 2010 Act, the third party **can obtain information from someone other than the insured about the insurance at the outset**. It can request information about whether there is a contract of insurance that covers the supposed liability, or might reasonably be regarded as covering it and, if there is, it can request further information including the identity of the insurer, what the terms of the contract are, whether the insured has been informed that the insurer has contended that it is not liable under the contract in respect of the supposed liability, and whether there are or have been any proceedings between the insurer and the insured in respect of the supposed liability and if so relevant details of those proceedings.

The request can be made to anyone who is able to provide this information, thus including insurance brokers. Before the 2010 Act there was no right to request any information from insurance brokers, even though they are often best placed to identify the insurer and any relevant policy. Anyone who receives such a notice is **obliged, within 28 days from the**

date of receipt of the notice, to provide as much of the information specified as they can and, if they cannot provide it, to state why and provide details of any other person who might be able to supply it. If there is a failure to comply with such a notice, the third party can apply to court for an order compelling compliance.

There is likely to be an increase in written requests for information and more disclosure demands being made of insurers and brokers in the early stages prior to litigation being commenced. These requests will need to be dealt with swiftly given the 28 day time limit and sanctions for non-compliance.

DEFENCES AVAILABLE TO THE INSURER

Even if a third party establishes the insured's liability to it, they must also establish the insurer's liability. Whilst the insurer can raise defences, under the 2010 Act, it can no longer rely on strict interpretation of conditions in the policy. For example the transfer of rights may be subject to a condition that the insured needs to fulfil, such as notification of a claim within a specified time limit, but if the third party has done it instead of the insured it will now be treated as having been done by the insured.

CONTACT US

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The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.

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