



# Briefing

## Insurance

## The Third Parties (Rights Against Insurers) Act 2010

### The Key Provisions

After much delay, the Third Parties (Rights Against Insurers) Act 2010 (the "Act") will come into force on 1 August 2016. The essential purpose of the act is to aid claimants in procuring recoveries from the insurers of insolvent defendants.

This will be of particular use to businesses that frequently find themselves in litigation with financially weak defendants. However, insolvency practitioners should also take note of the Act as it places new obligations on them.

### Claimant's right to sue the insurer

The key feature of the Act is that where an insured defendant becomes insolvent, the claimant obtains the right to pursue the defendant's insurer directly.

Importantly, claimants can now do this without having to first obtain a judgment against the defendant, which is the position under the current law.

This allows the claimant to establish if there is responsive insurance in place, before deciding whether to proceed with a claim against the defendant. This is important because the insurance may be the insolvent defendant's only valuable asset.

### Right to Sue Insurer - Key Points:

- No need to obtain judgment against the defendant before suing the insurer.
- Can seek a declaration as to whether the insurer is liable to pay.
- Can join defendant and insurer in single set of proceedings.

### Claimant's right to obtain insurance information

The Act provides claimants with the right to obtain extensive information regarding the defendant's insurance. The right arises as soon as the defendant becomes insolvent.

### What information can be obtained?

- Identity of the insurer.
- The terms of the insurance.
- The amount of cover still available under the insurance.
- Whether the insurer has declined a claim by the defendant.
- Whether there have been proceedings between the insurer and the defendant regarding the declinature.
- Whether any insurance proceeds would be subject to a fixed charge in favour of a third party.

The Act allows the claimant to seek this information from the defendant or from third parties who are able to provide it. This includes, insolvency practitioners appointed to the defendant, its insurance broker, the insurer and (potentially) advisers such as solicitors and accountants.

### Enforcing the right to information

A claimant can seek insurance information by serving a notice specifying the required information from the defendant or third parties obliged to give it. The recipients must respond within 28 days, specifying: (i) what information they can provide; and (ii) where they cannot provide the information, why they cannot.

If a recipient fails to respond to a notice, the claimant is entitled to seek an order from Court requiring the recipient to comply.

This is a tight timeframe. Insolvency practitioners, in particular, may have only recently been appointed to the insolvent defendant and have limited knowledge of the defendant's business. In such situations they may have to rely on the defendant's broker and insurer to provide assistance.

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