

The Third Parties (Rights Against Insurers) Act 2010

Improved Rights for Unsecured Creditors of Insolvent Companies

Under the Third Parties (Rights Against Insurers) Act (1930), there have long existed provisions which, provided certain hurdles can be overcome, enable parties who have a claim against an insolvent insured party to make a recovery direct from the insurance policy, rather than simply ranking with other unsecured creditors in the insolvency. The hurdles under the 1930 Act in practice deterred claimants from making claims because it was not always easy or possible to get information about the extent of insurance (and therefore decide whether any costs outlay was likely to be worthwhile). In addition claimants faced the expense of having to restore a defunct company to the Register in order for it to bring or defend legal proceedings.

The new Act aims to bring the 1930 Act up to date and improve the rights of third parties whilst reducing litigation, expense and delay. Under section 1 a third party will be able to bring proceedings directly against an insurer to establish both the liability of the insured party and the potential liability of the insurer. If a third party has reason to believe that an insolvent insured has incurred a liability to him, he may request information from anyone who might have knowledge of the insurance as to the identity of the insurer, the terms of the insurance, any limits of liability and whether there are any fixed charges which would apply to any sums paid out. This information has to be provided within 28 days. In the past it has been difficult to obtain such information but now people such as brokers, former employees and others authorised to hold policy information can be approached and are bound to answer.

The rights which can be enforced by a third party are no greater than those which the insured itself would have had. Accordingly, the insurers can defend themselves under the insurance policy if they believe they are entitled to do so. So whilst the claimant will be in no better position than the insured would have been, he will certainly be stealing a march on other unsecured creditors.

The Act was expected to come into force in April 2011, but at the time of writing a date is still awaited.

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