



## Direct Claims Against UK Insurers of Insolvent Defendants

### In Brief

On 1 August 2016, six years after it received Royal Assent, the UK Third Parties (Rights Against Insurers) Act 2010 (the “2010 Act”) will finally come into force. It is expected to provide an effective mechanism for third-party claimants to seek recovery directly from an insolvent defendant’s liability insurers.

The UK Third Parties (Rights Against Insurers) Act 1930 (the “1930 Act”) provides for a statutory assignment to a third-party claimant of an insolvent debtor’s rights to claim against its liability insurer. This allows the third party to “step into the shoes of” the insured debtor and sue the debtor’s insurers directly, rather than having its judgment left unsatisfied through the judgment debtor’s insolvency.

The 1930 Act righted the perceived wrong of denying a judgment creditor the benefit of an insolvent judgment debtor’s liability insurance protections—which would have responded but for the fortuitous fact that the judgment debtor had fallen into insolvency. Prior to the coming into force of the 1930 Act, any insurance recoveries fell to be dealt with in the insolvency, and thus shared amongst all creditors.

The 1930 Act, however, has proved cumbersome in operation because, before being able to pursue action directly against insurers, the claimant first has to pursue the defunct (insured) defendant to a successful

outcome (establishing liability by agreement, award or judgment). Two separate sets of proceedings have therefore been needed. With the coming into force on 1 August 2016 of the 2010 Act, however, whilst the statutory assignment device is retained, it will no longer be necessary to institute two separate sets of proceedings in order to benefit from it. Instead the claimant can simply sue the defendant’s insurers directly, whilst at the same time seeking a declaration of the insured defendant’s liability in that single set of proceedings.

The provisions of the 2010 Act apply only to a person/entity whose insolvency status is such that he is referred to as a “relevant person” under the Act. The delay between the Third Party (Rights Against Insurers) Bill having received Royal Assent in 2010 and its coming into force in 2016 was caused by the need to find the opportunity to amend its terms, in particular to provide an efficient mechanism to allow the definition of “relevant persons” to be kept up-to-date and in line with modern insolvency practice.

Such opportunity to amend was taken as part of the Insurance Act 2015 (for more on which, see our previous *Jones Day Commentary*, “[Big Changes Coming in English Commercial Insurance Law: The United Kingdom Insurance Act 2015](#)”). The Act empowers the Secretary of State simply to add or remove categories of relevant person by statutory instrument.

Accordingly, the Third Parties (Rights Against Insurers) Regulations were passed on 28 April 2016, updating the “relevant person” definition and providing for the 2010 Act to come into force on 1 August 2016.

Although the 1930 Act will be repealed, its more cumbersome recovery mechanism will still apply where both the insolvency and liability to the third party arose prior to 1 August 2016. In cases where only one of these two events (insolvency/liability) occurs prior to 1 August 2016, the new law will apply. To that extent, the 2010 Act can be said to be retrospective in its effect.

In addition to avoiding the need for two sets of proceedings, other advantages to claimants under the new regime include:

- A removal of what had been the need to restore a defunct company to the UK companies register (if it had been struck off) simply for the purpose of being able to sue it;
- A reduction in the number of “technical” coverage defences available for an insurer to run against the claimant;
- Importantly, a claimant is given the ability to raise questions about the insurance at an early stage. Often under the 1930 Act regime, a claimant was forced to operate in the dark, not knowing whether there was insurance in place and, if so, its terms.
- A claimant can ask questions about a defendant’s coverage by service of a notice upon persons related to the defendant (including former directors, administrators or liquidators), who are required to respond within 28 days of receipt or face court challenge.

## Key Facts

- With the coming into force of the 2010 Act on 1 August 2016, it will be much simpler for a third-party claimant to recover directly against an insolvent defendant’s liability insurers.
- The 2010 Act allows a claimant that believes it has rights under the Act to serve notice upon companies/individuals (including all relevant insolvency practitioners), requiring disclosure within 28 days of information relating to the defendant’s liability insurance. Court sanction will follow in the event of noncompliance.
- The claimant need issue only one set of proceedings against the defendant’s liability insurers, seeking declarations as to both the defendant’s and insurers’ liability.
- If it has been dissolved, there is no longer any need to restore the defendant company to the register.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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