

## Claims Against Insolvent Party's Insurers

### Third Party (Rights Against Insurers) Act 2010

On **1 August 2016** the long-awaited Third Parties (Rights against Insurers) Act 2010 ("2010 Act") will finally come into force replacing its outdated forerunner ("1930 Act"). Whilst, under the 1930 Act, a third party could step into the shoes of an insolvent insured to claim directly against the insurer, the 1930 Act had a number of shortcomings:

- The third party could not be in a better position than the insured –
  - if the insured breached the policy terms, the third party's claim might be defeated;
  - the third party would have to pay the same policy excess as the insured;
- The third party had to obtain judgment against the insured before claiming against the insurer – this would usually mean multiple sets of proceedings or even restoring a dissolved insured to the register;
- The 1930 Act only applied to insureds that were in liquidation;
- It could be difficult for third parties to obtain details about the insured's policy.

#### The 2010 Act

Under the 2010 Act many of the above shortcomings will be ironed out. The 2010 Act will be extended to insureds in **all forms of formal insolvency** and also schemes of arrangement, dissolution and receivership. It will extend to insolvent companies, individuals, partnerships and LLPs.

Under the 2010 Act, a third party will be able to **proceed directly against the insurer** without first obtaining judgment against the insured. Obviously, the insured's liability will still need to be established but there will only need to be a single set of proceedings and the third party's costs will be recoverable. The corollary of the insured's rights being transferred to the third party is that the third party's **direct claim against the insured will be extinguished** other than in respect of a shortfall. This could create complications in respect, for example, voting rights at CVA meetings as the quantum may be unclear.

The insurer may still raise against the third party all the defences or rights of set-off that it could have raised against the insured – the third party cannot be put in a better position. That said, **'pay when paid'** clauses and ongoing policy requirements on the insured will not apply to third parties under the 2010 Act.

The 2010 Act also contains improved rights to **information** for the third party who may require policy information from the insured or any person able to provide it.

The 2010 Act also has **cross-border** effect meaning that it will potentially apply to foreign insurance companies.

For a copy of the **2010 Act** itself [click here](#).

**If you have any queries in relation to the 2010 Act, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.**



#### AMB Law

46 New Broad Street  
London  
EC2M 1JH

T: +44 (0)20 3651 5646  
F: +44 (0)20 3651 5554  
[office@amblaw.co.uk](mailto:office@amblaw.co.uk)

18 Epsilon House  
West Road  
Ipswich  
IP3 9FJ

T: +44 (0)1473 276103

#### Alistair Bacon *Principal*

T : 020 3651 5647  
M: 07881 554062  
E: [abacon@amblaw.co.uk](mailto:abacon@amblaw.co.uk)

#### William Thompson *Trainee Solicitor*

T : 020 3651 5704  
[wthompson@amblaw.co.uk](mailto:wthompson@amblaw.co.uk)

#### Stephen Carter *Consultant*

T : 020 7329 4242  
[scarter@amblaw.co.uk](mailto:scarter@amblaw.co.uk)