



## **Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 June 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Kelly O'Dwyer  
Minister for Revenue and Financial Services

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## 1 Name

This instrument is the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Corporations Regulations 2001*

#### **1 At the end of Part 5.1**

Add:

##### **5.1.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 415D of the Act**

For the purposes of subparagraph 415D(6)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

#### **2 At the end of Part 5.2**

Add:

##### **5.2.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 434J of the Act**

For the purposes of subparagraph 434J(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

#### **3 At the end of Part 5.3A**

Add:

##### **5.3A.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 451E of the Act**

- (1) For the purposes of subparagraph 451E(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation (2) is prescribed.
- (2) The kinds of contracts, agreements or arrangements are as follows:
  - (a) an agreement (within the meaning of the *Convention* defined in section 3 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*);
  - (b) a contract, agreement or arrangement that is a licence, permit or approval issued by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority of the Commonwealth or of a State or a Territory; or
    - (iii) a local governing body established by or under a law of a State or Territory;
  - (c) a contract, agreement or arrangement relating to Australia's national security, border protection or defence capability;
  - (d) a contract, agreement or arrangement for the supply of goods or services to a public hospital or a public health service;
  - (e) a contract, agreement or arrangement for the supply of goods or services by or on behalf of a public hospital or a public health service;

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- (f) a contract, agreement or arrangement for the supply of essential or critical information technology, or communications technology, products or services to:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority of the Commonwealth or of a State or a Territory; or
    - (iii) a local governing body established by or under a law of a State or Territory; or
    - (iv) the public on behalf of an entity covered by subparagraph (i), (ii) or (iii);
  - (g) a contract, agreement or arrangement that is, or is directly connected with, a derivative;
  - (h) a contract, agreement or arrangement that is, or is directly connected with, a securities financing transaction;
  - (i) a contract, agreement or arrangement for the underwriting of an issue, or sale, of securities, financial products, bonds, promissory notes, or syndicated loans;
  - (j) a contract, agreement or arrangement under which a party is or may be liable to subscribe for, or to procure subscribers for, securities, financial products, bonds, promissory notes, or syndicated loans;
  - (k) a contract, agreement or arrangement that is, or governs, securities, financial products, bonds, promissory notes, or syndicated loans;
  - (l) a contract, agreement or arrangement under which securities are offered, or may be offered, under a rights issue;
  - (m) a contract, agreement or arrangement for the sale of all or part of a business, including by way of the sale of securities or financial products;
  - (n) a contract, agreement or arrangement for the issue of an instrument that:
    - (i) is a security, financial product, bond, promissory note, or syndicated loan; and
    - (ii) belongs to a class of such instruments, each of which is fungible, and the first of which was issued before 1 July 2018;
  - (o) a contract, agreement or arrangement that is, or is directly connected with, a margin lending facility (within the meaning of Chapter 7 of the Act);
  - (p) a contract, agreement or arrangement that is:
    - (i) a covered bond (within the meaning of the *Banking Act 1959*); or
    - (ii) for issuing such a bond; or
    - (iii) directly connected with such a bond or the issuing of such a bond;
  - (q) a contract, agreement or arrangement providing for the management of financial investments;
  - (r) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for securitisation or a public-private partnership;
  - (s) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for a project finance arrangement under which:
    - (i) a financial accommodation is to be repaid or otherwise discharged primarily from the project's cash flow; and
    - (ii) all or substantially all of the project's assets, rights and interests are to be held as security for the financial accommodation;
  - (t) a contract, agreement or arrangement for the keeping in escrow of:
    - (i) code, or passwords, for computer software; or
    - (ii) material directly associated with such code or passwords;
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- (u) a contract, agreement or arrangement for the commercial charter of a ship if:
  - (i) the ship is not an Australian ship (within the meaning of the *Shipping Registration Act 1981*); and
  - (ii) the charter is by an Australian national (within the meaning of that Act) for the purposes of exporting goods from Australia, or from an external Territory, to another country;
- (v) a contract, agreement or arrangement under which the priority of security interests in particular property is changed or can change;
- (w) a contract, agreement or arrangement that is a flawed asset arrangement;
- (x) a contract, agreement or arrangement that is, or is directly connected with, a factoring arrangement (within the meaning of the *ASIC Corporations (Factoring Arrangements) Instrument 2017/794*);
- (y) a contract, agreement or arrangement that is the operating rules (other than the listing rules) of a financial market;

Note: The operating rules of a licensed market (within the meaning of Chapter 7 of the Act) are a contract, see subsection 793B(1) of the Act.
- (z) a contract, agreement or arrangement that is the operating rules of a clearing and settlement facility;

Note: The operating rules of a licensed CS facility (within the meaning of Chapter 7 of the Act) are a contract, see subsection 822B(1) of the Act.
- (za) a contract, agreement or arrangement that confers rights on the operator of a financial market, or the operator of a clearing and settlement facility, in relation to the operation of the market or facility;
- (zb) a contract, agreement or arrangement of which the parties include the Reserve Bank of Australia and the operator of a clearing and settlement facility;
- (zc) a contract, agreement or arrangement under which participants (within the meaning of Chapter 7 of the Act) in a clearing and settlement facility may settle obligations on behalf of other participants (within the meaning of that Chapter) in the facility;
- (zd) a legally enforceable arrangement referred to in paragraph 9(1)(b) of the *Payment Systems and Netting Act 1998* that supports an approved RTGS system (within the meaning of that Act);

Note: The arrangement includes the rules that are part of that arrangement.
- (ze) an approved netting arrangement (within the meaning of the *Payment Systems and Netting Act 1998*);

Note: The arrangement includes the rules that are part of that arrangement.
- (zf) a contract, agreement or arrangement that confers rights on:
  - (i) the operator of an approved RTGS system (within the meaning of the *Payment Systems and Netting Act 1998*); or
  - (ii) the coordinator of an approved netting arrangement (within the meaning of that Act);in relation to the operation of that system or netting arrangement;
- (zg) a contract, agreement or arrangement under which the parties to an arrangement covered by paragraph (zd) or (ze) (the **main arrangement**) may settle obligations on behalf of other parties to the main arrangement;
- (zh) a close-out netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);



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- (zi) a contract, agreement or arrangement under which security is given over financial property (within the meaning of the *Payment Systems and Netting Act 1998*) in respect of eligible obligations (within the meaning of that Act) of a party to a contract covered by paragraph (zh);
  - (zj) a netting market (within the meaning of the *Payment Systems and Netting Act 1998*);
  - (zk) a market netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);
  - (zl) a contract, agreement or arrangement under which security is given, in accordance with a market netting contract covered by paragraph (zk), in respect of obligations of a party to the market netting contract;
  - (zm) a contract, agreement or arrangement that is an outsourcing arrangement for the purposes of *Prudential Standard CPS 231 Outsourcing* or *Prudential Standard SPS 231 Outsourcing*;

Note 1: In 2018, *Prudential Standard CPS 231 Outsourcing* was set out in the Banking, Insurance and Life Insurance (prudential standard) determination No. 6 of 2016.

Note 2: In 2018, *Prudential Standard SPS 231 Outsourcing* was set out in the Superannuation (prudential standard) determination No. 3 of 2012.

- (zn) a contract, agreement or arrangement entered into or renewed on or after 1 July 2018, but before 1 July 2023, as a result of either of the following:
  - (i) the novation of, or the assignment of one or more rights under, a contract, agreement or arrangement entered into before 1 July 2018;
  - (ii) a variation of a contract, agreement or arrangement entered into before 1 July 2018;
- (zo) a contract, agreement or arrangement entered into on or after 1 July 2018, but before 1 July 2023, for the provision of any of the following kinds of work, goods or services for a particular project:
  - (i) building work (within the meaning of the *Building and Construction Industry (Improving Productivity) Act 2016*);
  - (ii) work to be carried out anywhere in Australia that, if carried out in New South Wales, would be covered by paragraph 5(1)(d) or (f) of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and not be excluded by subsection 5(2) of that Act;
  - (iii) goods or services to be provided anywhere in Australia that, if provided in New South Wales, would be related goods and services (within the meaning of the *Building and Construction Industry Security of Payment Act 1999* (NSW));
 if the total payments under all contracts, agreements or arrangements for the project for work, goods or services of those kinds is at least \$1 billion;
- (zp) a contract, agreement or arrangement that:
  - (i) is entered into to enable the satisfactory completion of a contract, agreement or arrangement covered by paragraph (zo); and
  - (ii) is for the provision of a kind of work, goods or services covered by that paragraph.