

Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018

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

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Corporations Regulations 2001 2

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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;

(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;

(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*);

(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.