



Corporations (Stay on Enforcing Certain Rights) Declaration 2018

I, Kelly O'Dwyer, Minister for Revenue and Financial Services, Minister for Women, and Minister Assisting the Prime Minister for the Public Service, make the following declaration under subsections 415D(7), 434J(6) and 451E(6) of the *Corporations Act 2001*.

Dated: 20 June 2018

Kelly O'Dwyer
Minister for Revenue and Financial Services, Minister for Women, and Minister
Assisting the Prime Minister for the Public Service

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1 Name

This instrument is the *Corporations (Stay on Enforcing Certain Rights) Declaration 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	The later of: (a) 1 July 2018; and (b) the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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 subsections 415D(7), 434J(6) and 451E(6) of the *Corporations Act 2001*.

4 Interpretation

In this instrument:

Act means the *Corporations Act 2001*.

financing arrangement means:

- (a) any form of financial accommodation; or
- (b) a contract, agreement or arrangement of a kind known as a finance lease, an operating lease, a bill facility, a performance bond, a guarantee, a bank guarantee, a letter of credit or a hire purchase agreement.

specified person means the body, corporation or company the subject of subsection 415D(1), 434J(1) or 451E(1) of the Act (as applicable).

standstill or forbearance arrangement means a contract, agreement or arrangement that suspends or restricts the enforcement of rights under another contract, agreement or arrangement.

5 Declaration of kinds of rights

- (1) The kinds of rights referred to in subsection (4) of this section are declared under paragraph 415D(7)(b) of the Act to be kinds of rights to which subsection 415D(1) of the Act does not apply.
 - (2) The kinds of rights referred to in subsection (4) of this section are declared under paragraph 434J(6)(b) of the Act to be kinds of rights to which subsection 434J(1) of the Act does not apply.
 - (3) The kinds of rights referred to in subsection (4) of this section are declared under paragraph 451E(6)(b) of the Act to be kinds of rights to which subsection 451E(1) of the Act does not apply.
 - (4) The kinds of rights are as follows:
 - (a) a right to change the basis, including by the application of a different rate, on which an amount in respect of or under any of the following is calculated:
 - (i) a financing arrangement;
 - (ii) a guarantee, indemnity or security related to a financing arrangement (whether or not the guarantee, indemnity or security is limited in any way);
 - (b) a right to payment by way of indemnity (whether or not the indemnity is limited in any way) in respect of:
 - (i) any liability or loss arising as a result of a person preserving or enforcing rights; or
 - (ii) any charges and expenses incurred by a person in preserving or enforcing rights;
 - (c) a termination right under a standstill or forbearance arrangement, whether or not the standstill or forbearance arrangement suspends, preserves or modifies the right under the other contract, agreement or arrangement to which it applies;
 - (d) a right to change the priority, or order, in which amounts are to be paid, distributed or received under a contract, agreement or arrangement;
 - (e) a right of set-off or a right of combination of accounts;
 - (f) a right to net balances or other amounts;
 - (g) a right to take action to enforce:
 - (i) a right referred to in paragraph (e) or (f); or
 - (ii) a right referred to in subsection 6(1), (2) or (3) if, on the enforcement of that right to take action, the circumstances referred to in subsection 6(4) or (5) (as applicable) would be satisfied;for the purposes of enforcing a right referred to in paragraph (e) or (f), or in subsection 6(1), (2) or (3) (as applicable), whether or not an amount is due for payment, will or may become due for payment, or is unpaid;
- Note: The rights referred to in this paragraph include:
- (a) a right to accelerate or otherwise vary a date for payment of an amount;
 - (b) a right to convert or exchange amounts denominated in different currencies; and
 - (c) a right to crystallise a security interest.

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- (h) a right to:
 - (i) assign or otherwise transfer rights or obligations; or
 - (ii) novate rights or obligations;
 - (i) a right:
 - (i) for property that is subject to a circulating security interest to become subject to a non-circulating security interest; or
 - (ii) for a floating charge over property to operate as a fixed charge; or
 - (iii) for property consisting of accounts or chattel paper to be transferred to a secured party by way of security; or
 - (iv) that restricts the grantor of a security interest in property from dealing with the property;
 - (j) a right:
 - (i) to perform obligations; or
 - (ii) to engage another person to perform obligations; or
 - (iii) to enforce rights; or
 - (iv) to engage another person to enforce rights;
 - of the specified person under a contract, agreement or arrangement;
 - (k) a right to enforce a possessory security interest in circumstances where paragraphs 440JA(b), (c) and (d) of the Act are satisfied.
- (5) In paragraph (4)(i), words and expressions that are defined for the purposes of the *Personal Property Securities Act 2009* have the same meanings.
 - (6) For the purposes of paragraph (4)(k), the reference to the company in paragraph 440JA(b) of the Act is taken to be a reference to the specified person.

6 Declaration of kinds of rights in specified circumstances—a right to appoint a controller

- (1) A right to appoint a controller of property of the specified person is declared under paragraph 415D(7)(c) of the Act to be a kind of right to which subsection 415D(1) of the Act does not apply in the circumstances specified in subsection (4) or (5) of this section.
- (2) A right to appoint a controller of property of the specified person is declared under paragraph 434J(6)(c) of the Act to be a kind of right to which subsection 434J(1) of the Act does not apply in the circumstances specified in subsection (4) of this section.
- (3) A right to appoint a controller of property of the specified person is declared under paragraph 451E(6)(c) of the Act to be a kind of right to which subsection 451E(1) of the Act does not apply in the circumstances specified in subsection (4) of this section.
- (4) The circumstances are as follows:
 - (a) the right is to be enforced by a person who has a security interest in, or over, property of the specified person; and
 - (b) in relation to property of the specified person:
 - (i) a controller has been appointed; or

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- (ii) a right to appoint a controller has been enforced.
- (5) The circumstances are as follows:
- (a) the whole, or substantially the whole, of the property of the specified person is subject to a security interest; and
 - (b) the right is to be enforced by the person who has the security interest referred to in paragraph (a).