



# **Regional Investment Corporation (Small Business Drought Loans) Rules 2020**

made under the

*Regional Investment Corporation Act 2018*

## **Compilation No. 1**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Regional Investment Corporation (Small Business Drought Loans) Rules 2020* that shows the text of the law as amended and in force on 1 October 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This instrument is the *Regional Investment Corporation (Small Business Drought Loans) Rules 2020*.

### 3 Authority

This instrument is made under the *Regional Investment Corporation Act 2018*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Board;
- (b) Corporation;
- (c) Desertification Convention;
- (d) responsible Ministers.

In this instrument:

*Act* means the *Regional Investment Corporation Act 2018*.

*affected area* has the same meaning as in the Desertification Convention.

*commercial debt* means debt established on commercial terms, at commercial interest rates.

*drought-affected small business* has the meaning given by section 5.

*maximum loan amount*, for a drought-affected small business, means the lesser of the following:

- (a) an amount that is equal to 50% of the existing commercial debt of the business;
- (b) \$500,000.

*program* means the Small Business Drought Loans Program prescribed by section 6.

*small business drought loan* means a loan by the Corporation to a drought-affected small business, of not more than the maximum loan amount for the business, for the purpose of providing working capital for the business or refinancing existing commercial debt owed by the business, on terms and conditions that include the following:

- (a) the term of the loan is 10 years;
- (b) only interest is payable for the first 5 years of the loan;
- (d) the business must pay interest and repay principal over the final 5 years of the loan;

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- (e) the principal of the loan may be repaid (wholly or partly) at any time during the term of the loan without penalty.

**5 What is a *drought-affected small business*?**

- (1) A business is a ***drought-affected small business*** if all the requirements in this section are met in relation to the business.

Note: Extra conditions must be met for a loan to be made to the business under the Small Business Drought Loans program: see Division 3 of Part 2.

*Substantial part of turnover from supplies to farm businesses*

- (2) A substantial part of the turnover of the business must be, or have been, from the business supplying, to farm businesses in affected areas, goods or services relating to primary production by those farm businesses.

*Effect of drought on business*

- (3) As a consequence of drought affecting farm businesses in affected areas, there must have been:
- (a) a material reduction in the turnover of the business; or
  - (b) a material increase in unsecured debts to the business by farm businesses.

*Business has fewer than 20 employees*

- (4) The business must have fewer than 20 employees other than casual employees.

*Business not a farm business*

- (5) The business must not be a farm business.

## **Part 2—Small Business Drought Loans Program**

### **Division 1—Prescribing Small Business Drought Loans Program**

#### **6 Small Business Drought Loans Program prescribed**

- (1) For the purposes of paragraph 8(1)(g) of the Act, this section prescribes the Small Business Drought Loans Program.
- (2) The Small Business Drought Loans Program is the program that:
  - (a) consists of the following activities:
    - (i) receiving applications for small business drought loans, and dealing with the applications in accordance with Division 2;
    - (ii) making small business drought loans in accordance with Division 3;
    - (iii) determining in accordance with Division 4 the terms and conditions on which small business drought loans are made;
    - (iv) taking security for small business drought loans;
    - (v) charging borrowers for transaction costs incurred by the Corporation in relation to small business drought loans;
    - (vi) collecting and dealing with payments of interest on, and repayments of principal of, small business drought loans, and if required, enforcing security taken for small business drought loans, in accordance with Division 5;
    - (vii) reviewing periodically small business drought loans and the terms and conditions on which they are made;
    - (viii) dealing with debts relating to small business drought loans in accordance with Division 6;
    - (ix) reporting to the responsible Ministers on small business drought loans in accordance with Division 7; and
  - (b) relates to small business drought loans funded in accordance with Division 8.

#### **7 Constitutional basis for program**

The constitutional basis for the program is paragraph 51(xxix) of the Constitution, so far as it provides a basis for implementing Australia's international obligations under the Desertification Convention.

**Division 2—Dealing with applications for small business drought loans**

**8 Informing applicants of outcome of applications for small business drought loans**

The Corporation must ensure that applicants for small business drought loans are informed of the outcomes of their loan applications as soon as practicable after decisions on their applications have been made.



## **Division 3—Making small business drought loans**

### **9 Small business drought loans to be made only on application**

The Corporation may make a small business drought loan to a drought-affected small business only if the business makes an application for the loan that:

- (a) is in writing; and
- (b) includes the information (if any) required by the Corporation; and
- (c) is accompanied by the documents (if any) required by the Corporation.

### **10 Capacity to repay loan and provide security**

The Corporation must not make a small business drought loan to a drought-affected small business unless:

- (a) the business is assessed as having the capacity to repay the loan; and
- (b) sufficient security for the loan is provided by the business.

### **11 Extra preconditions for making small business drought loans**

- (1) The Corporation must not make a small business drought loan to a drought-affected small business unless:
  - (a) the business is in financial need of a concessional loan; and
  - (b) the business is assessed as financially viable, or as having sound prospects of a return to financial viability within 10 years; and
  - (c) the business owes commercial debt; and
  - (d) throughout the 6 months before the business applied for the loan, the business had fewer than 20 employees other than casual employees; and
  - (e) the business is carried on by:
    - (i) a sole trader covered by subsections (2) and (3); or
    - (ii) a partnership whose partners include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same partner or different partners); or
    - (iii) a trust whose beneficiaries or unit-holders include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same beneficiary or unit-holder or different ones); or
    - (iv) a corporation (within the meaning of the *Corporations Act 2001*), other than a public company (within the meaning of that Act), whose members include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same member or different members); and
  - (f) the entity carrying on the business is registered for tax purposes in Australia with an Australian Business Number (ABN) and registered under the *A New Tax System (Goods and Services Tax) Act 1999*; and

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(g) the entity carrying on the business is not subject to external administration or bankruptcy.

Note: The Board has the function of ensuring that the Corporation has procedures for review of decisions to make or refuse small business drought loans: see section 24.

- (2) This subsection covers a person who is an Australian citizen or permanent resident.
- (3) This subsection covers a person whose principal business pursuit (in terms of the majority of the person's own labour and income) is the drought-affected small business.

## **Division 4—Determining terms and conditions of small business drought loans**

### **12 Extra terms and conditions of small business drought loans**

The Corporation may determine the terms and conditions on which a small business drought loan is made.

Note: The loan needs to be subject to the terms and conditions mentioned in the definition of *small business drought loan* in section 4.

### **13 Setting interest rates**

The Corporation must determine the interest rates on all small business drought loans in accordance with the agreed methodology described in section 25.

## **Division 5—Collecting and dealing with payments and enforcing security**

### **14 Corporation to pay amounts collected to Commonwealth**

The Corporation must pay the Commonwealth, as soon as reasonably practicable, all loan repayments received by the Corporation from recipients of small business drought loans (including principal repayments and payments of interest, but excluding payments of any transaction costs the Corporation charged the recipients in relation to the loans).

### **15 Decisions on foreclosure to be made by Board**

Any decision of the Corporation on foreclosure on a small business drought loan must be made by the Board (not a delegate of the Corporation or the Board).

## **Division 6—Dealing with debt relating to small business drought loans**

### **16 Mediation**

The Corporation must offer to undertake mediation relating to debts relating to small business drought loans and, if the offer is accepted, undertake the mediation.

### **17 Waiver**

A decision of the Corporation to waive debt relating to a small business drought loan must be made by the Board (not a delegate of the Corporation or the Board) after consulting the responsible Ministers and taking their views into account.

## **Division 7—Reporting to responsible Ministers**

### **18 Quarterly reporting**

The Corporation must provide a report on small business drought loans to the responsible Ministers as at the end of every March, June, September and December, including information regarding:

- (a) the uptake of small business drought loans; and
- (b) details of the portfolio of small business drought loans; and
- (c) financial performance information.

Note: The Corporation also has the function of providing information about small business drought loans to the responsible Ministers on request: see section 23.

## **Division 8—Funding of small business drought loans**

### **19 Funding of small business drought loans**

- (1) The Corporation will be funded to make small business drought loans through an appropriation made by an Act.
- (2) Funds for small business drought loans will be provided to the Corporation upon the Corporation's request to enable the Corporation to advance loan funds to recipients of those loans as required.
- (3) The Corporation must:
  - (a) only request funds as they are required to advance loan funds to recipients of small business drought loans; and
  - (b) only use funds provided for small business drought loans for that purpose.

## **Division 9—Other matters relating to program**

### **20 Charging of transaction costs**

For the purposes of subparagraph 8(5)(b)(i) of the Act, the Corporation may charge transaction costs incurred by the Corporation in relation to the program.

### **21 Directions by responsible Ministers**

For the purposes of subparagraph 8(5)(b)(iii) of the Act, the responsible Ministers may give written directions to the Corporation relating to the program (other than directions that direct, or have the effect of directing, the Corporation in relation to a particular small business drought loan).



## **Part 3—Other functions relating to program**

### **Division 1—Corporation functions**

#### **22 Preparing and publishing guidelines relating to program**

For the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of:

- (a) preparing, in consultation with the responsible Ministers, written guidelines about the program, including guidelines about:
  - (i) the types of security the Corporation will consider and require for small business drought loans; and
  - (ii) how the Corporation will determine whether persons are Australian citizens or permanent residents;
  - (iii) the right to request review of decisions to make or refuse small business drought loans and the process for requesting such reviews; and
- (b) publishing the guidelines.

#### **23 Providing information and advice to responsible Ministers**

For the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of:

- (a) providing information about small business drought loans to the responsible Ministers on request; and
- (b) advising the Commonwealth on matters that will improve the operation and policy outcomes of small business drought loans.

## Division 2—Board functions

### 24 Ensuring internal review of decisions about loans

For the purposes of paragraph 15(1)(e) of the Act, the Board has the function of ensuring that the Corporation develops and applies procedures, for reviewing decisions (the *original decisions*) to make or refuse small business drought loans, that:

- (a) are transparent, robust and fair; and
- (b) require reviews to be carried out, and decisions to be made on reviews, by persons who were not the primary decision-makers of the original decisions; and
- (c) are consistent with principles of procedural fairness.

### 25 Setting interest rates

For the purposes of paragraph 15(1)(e) of the Act, the Board has the functions of:

- (a) agreeing with the responsible Ministers on a methodology, for setting variable interest rates for small business drought loans, that:
  - (i) is to result in rates that only cover the Corporation's administrative costs to deliver small business drought loans and the Commonwealth's borrowing costs to fund the Corporation to make such loans; and
  - (ii) involves review of the interest rate for small business drought loans each November and May and, if necessary, revising it in line with changes of more than 0.1% in the Commonwealth 10-year bond rate; and
- (b) ensuring that the Corporation:
  - (i) applies any revised interest rate on the first day of the third month after the month the relevant review was conducted; and
  - (ii) notifies affected recipients of small business drought loans in advance of any revision of the interest rate.

### 26 Developing and applying loan management policies and procedures

- (1) For the purposes of paragraph 15(1)(e) of the Act, the Board has the functions of:
  - (a) ensuring that the Corporation develops policies and procedures described in subsection (2), taking into account the following matters:
    - (i) the concessional nature of small business drought loans;
    - (ii) the effect on drought-affected small businesses of taking action in accordance with those policies and procedures; and
  - (b) ensuring that the Corporation applies those policies and procedures taking those matters into account.

- (2) Subsection (1) applies to policies and procedures for managing small business drought loans in a prudential manner to minimise the risk of default, including policies and procedures for:
- (a) arrears management; and
  - (b) recovery action; and
  - (c) foreclosure arrangements; and
  - (d) waiving debt after consulting the responsible Ministers; and
  - (e) writing off debt; and
  - (f) handling disputes and complaints.

## Part 4—Transitional, application and savings provisions

### 27 *Regional Investment Corporation (Drought and Small Business Drought Loans)(Cessation of Interest-Free Period) Amendment Instrument 2020*—transitional and application provisions

- (1) In this section:

***commencement day*** means 1 October 2020.

Note: This is the day on which the instrument that made the relevant amendments commenced.

***relevant amendments*** means the amendments to this instrument made by the *Regional Investment Corporation (Drought and Small Business Drought Loans)(Cessation of Interest-Free Period) Amendment Instrument 2020*.

- (2) Where an application for a small business drought loan was made before the commencement day, this instrument applies in relation to the application and any loan offered on the basis of the application as if the relevant amendments had not been made.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Regional Investment Corporation (Small Business Drought Loans) Rules 2020	16 Jan 2020 (F2020L00028)	17 Jan 2020 (s 2(1) item 1)	
Regional Investment Corporation (Drought and Small Business Drought Loans)(Cessation of Interest-Free Period) Amendment Instrument 2020	23 Sept 2020 (F2020L01201)	Sch 1 (items 6–8): 1 Oct 2020 (s 2)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2 .....	rep LA s 48D
s 4 .....	am F2020L01201
<b>Part 2</b>	
<b>Division 4</b>	
s 13 .....	am F2020L01201
<b>Part 4</b>	
Part 4 .....	ad F2020L01201
s 27 .....	ad F2020L01201

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