

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Corporations Act 2001

Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No.2) 2018

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subparagraphs 415D(6)(b)(i), 434J(5)(b)(i) and 451E(5)(b)(i) of the Act provide that regulations can prescribe a right contained in a kind of contract, agreement or arrangement to which subsections 415D(1), 434J(1) and 451E(1) do not apply. Subsections 415D(1), 434J(1) and 451E(1) provide for a stay on enforcing rights merely because of various arrangements or restructures such as the appointment of an administrator, the presence of a managing controller over all or a substantial portion of a corporation's property or because an entity is the subject of a compromise or arrangement.

The *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018* amended the *Corporations Regulations 2001* to insert new provisions that prescribe kinds of contracts, agreements or arrangements for the purposes of subparagraphs 415D(6)(b)(i), 434J(5)(b)(i) and 451E(5)(b)(i) of the Act. This ensures that rights in those kinds of arrangements remain available to the parties to those arrangements should the events in subsections 415D(1), 434J(1) or 451E(1) occur.

The *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No.2) 2018* (the Regulations) amend the *Corporations Regulations 2001* to repeal and substitute paragraph 5.3A.50(2)(f). The Regulations broaden the scope of paragraph 5.3A.50(2)(f) to provide that rights provided for under a contract, agreement or arrangement for the supply of essential or critical goods or services to government, or to the public on behalf of government, will continue to be available to the parties to those arrangements. Rights provided for under a contract, agreement or arrangement for the carrying out of essential or critical works for government will also continue to be available to the relevant parties.

Exposure drafts of the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018*, and accompanying explanatory materials, were released for public consultation from 16 April 2018 to 11 May 2018. Submissions received during these consultations and subsequent discussions with stakeholders were taken into account in the development of the Regulations, in particular the decision to broaden paragraph 5.3A.50(2)(f).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on 1 July 2018, immediately after the commencement of the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No.2) 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulations prescribe that the stay on ipso facto clauses will not apply to rights contained in the kinds of arrangements set out in Attachment. This ensures that the parties will remain able to exercise their contractual rights where these are triggered by a relevant insolvency event.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Explanation of provisions

Clauses 1, 2, 3 and 4—Machinery provisions

Clauses 1 to 4 of the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No.2) 2018* (the Regulations) are machinery provisions setting out:

- the name of the Regulations;
- the day the Regulations commenced, which is 1 July 2018, immediately after the commencement of the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018*;
- the authority for making the Regulations; and
- that the items in the schedule to the Regulations amend or repeal each instrument that is specified in the schedule and have effect according to their terms.

Item 1 of Schedule 1— Paragraph 5.3A.50(2)(f)

Item 1 of Schedule 1 repeals and substitutes Paragraph 5.3A.50(2)(f) of the *Corporations Regulations 2001*. The paragraph has been broadened to provide that rights provided for under a contract, agreement or arrangement for the supply of essential or critical goods or services to government, or to the public on behalf of government, will continue to be available to the parties to those arrangements. Rights provided for under a contract, agreement or arrangement for the carrying out of essential or critical works for government will also continue to be available to the relevant parties.

Examples of types of essential or critical goods, services and works include public transport services, public security or safety services, and works affecting essential public infrastructure such as new roads or railways. The paragraph is also intended to cover services that are essential because they facilitate the provision of essential services to government or to the public. Examples of services which could be considered essential to the provision of essential services include signalling services for public transport, and maintenance services and cleaning services for trains or other vehicles used in providing public transport services.