



PEER LEGAL ALERT: RIGHTS TRIGGERED BY INSOLVENCY EVENTS IN YOUR CONTRACT MAY NOT BE ENFORCEABLE

- From 1 July 2018, reforms to the Corporations Act 2001 (Cth) provide that, where an agreement gives enforcement and termination rights against a company triggered by that company being in administration, subject to a scheme of arrangement or appointing a controller, those rights may not be exercised against the company.
- This reform is aimed at enabling businesses to continue to trade in order to recover from an insolvency event instead of these clauses preventing their successful rehabilitation.
- The stay on enforcement only applies to rights granted under agreements post 1 July 2018 and, until 2023, novations, assignments and variations post 1 July 2018 will not bring contracts within the regime.
- The stay lasts for the period of the administration or when the company is wound up or by order of the court.
- Certain types of contracts are excluded from the regime, for example:
 - contracts relating to Australia's national security, border protection or defence;
 - contracts relating to supply of goods or services to or by a public hospital;
 - contracts for supply of essential works for government; and
 - contracts for derivatives, securities financing transactions, underwriting of securities, financial products, bonds, promissory notes or syndicated loans, margin lending facilities or management of financial investments.



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