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AUTOMATIC DEFAULT CLAUSES UNDER THE NEW TREASURY LAWS AMENDMENT ACT

INTRODUCTION

Following amendments to the *Corporations Act 2001* (Cth) via the *Treasury Laws Amendment (2017 Enterprises Incentives No 2) Act 2017* ('the Act'), the execution of some contractual rights by a party may need to be delayed. The Act received royal assent on 8 September 2017 and will commence on 1 July 2018.

STAY OF CONTRACTUAL RIGHTS

Under Part 2 of the Act, a party will be restricted from exercising certain contractual rights, including refusal to perform contractual services and termination, if the other party is affected by specified insolvency events.

A stay on these rights will be enforced where there is a compromise or arrangement (or the public announcement of one) under section 411 of the *Corporations Act* (section 415D of the Act), where a managing controller is appointed the corporation's property (section 434J of the Act) or the other party enters voluntary administration (section 451E of the Act).

However, not all rights are subject to the stay. A right under a contract entered into after the appointment of the managing controller or entered into after the company comes under administration will not be affected.

PERIOD OF STAY

The period of the stay is determined by one of numerous circumstances. It may come to an end if the other party fails to make an application under section 411 within 3 months of their announcement;

the application is withdrawn or the Court dismisses it; or once any approved compromise or arrangement comes to an end. Alternatively, the period may end when the managing controller's control of the property ends, or when the administration concludes.

WHAT THIS MEANS

It will become imperative for contracting parties who enter agreements on or after 1 July 2018 to be aware of these changes so as to avoid contravening the new statutory provisions. Of particular importance is each party's awareness of the other party's financial status throughout the term of the agreement.

For more information

For more information on automatic default clauses contact one of our Principal Solicitors:

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