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# CHANGES TO THE CORPORATIONS ACT 2001 (CTH)

## INTRODUCTION

Starting from 1 July 2018, there will be a prohibition on the enforcement of ipso facto clauses in certain contracts due to amendments to the Corporations Act 2001 (Cth) (*Corporations Act*).

## IPSO FACTO CLAUSES

Ipsa facto clauses are clauses which allow parties to terminate or amend a contract in the event that another party goes into administration, insolvency or some other financial crisis. Such clauses serve to assist parties in financial distress as contract performance in such circumstances can become particularly onerous.

## AMENDMENT TO THE *CORPORATIONS ACT*

Under the amended version of the *Corporations Act*, there will generally be no right to terminate or amend a contract if one party either:

- Enters into voluntary administration,
- Appoints a managing controller over substantially the whole of the corporation's property, or
- Publicly announces that it will be making an application to enter a scheme of arrangement for the purpose of being wound up in insolvency

Thus, the amendments to the *Corporation Act* effectively prohibit the right to terminate or amend a contract in the event that a party suffers a financial crisis.

## REASONS FOR AMENDMENT

The Federal Government's amendments to the *Corporations Act* are aimed at assisting company directors facing financial struggles. It is hoped that with these amendments company directors will avoid premature entry into voluntary administration. As a result of the new amendments, directors will be given the chance to rescue their businesses by

taking risks and trading their way out of insolvency.

### IMPACT ON CONSTRUCTION CONTRACTS

Many construction contracts permit the principal to terminate upon the event of the builder's insolvency. However, contracts which come into force after 1 July 2018 will not permit the principal to terminate the contract pursuant to such ipso facto provisions. As a result, builders facing financial troubles may be able to turn their companies around with the cash flow generated from construction jobs.

### EXCEPTIONS

It is expected that this prohibition on ipso facto clauses will not apply to complex financial arrangements, netting agreements, aircraft leases, provisions relating to the removal of trustee provisions and rights of set off.

Lawyers ought to ensure that contracts which come into force after 1 July 2018 are drafted carefully as their client may not be able to rely on an ipso facto provision in the event that another party suffers financial distress.

### For more information

For more information on the *Corporations Act* contact our Principal Solicitor/ Director

#### **Jessica Rippon**

T + 02 9239 3120

M: 0421 877 932

E: [jrippon@constructionlegal.com.au](mailto:jrippon@constructionlegal.com.au)

