

## Types of Contracts and Contractual Rights Excluded from the Stay on Ipso Facto Clauses

The Government is proposing to make regulations to set out types of contracts and contractual rights which will be excluded from the broad stay operation on the operation of ipso facto clauses. This will apply in addition to the general exclusion in relation to certain financial products set out in the draft Bill. The Government proposes that these regulations will include the contracts and rights listed below. The Government is seeking feedback on the appropriateness of the proposed exclusions and whether further exclusions may be warranted.

The list seeks to ensure that the stay will not apply where an ipso facto clause:

- is required or contemplated by a Commonwealth or State law, or an international obligation to which Australia is a party; OR
- is inherent to the type of contract. I.e. by removing the ipso facto clause it would render the contract unworkable or a nonsense.

### List of Excluded Contract types

- Agreements under the *Payment Systems and Netting Act 1998* (PSNA) – this includes some contracts dealt with under the *Banking Act 1959* (Cth), the *Insurance Act 1973* (Cth) *Life Insurance Act 1955* (Cth).
- Rights of set off
- Flexible priority arrangements
- Flawed asset arrangements
- Replacement of trustees
- Securities underwriting agreements
- Arrangements entered into under an ISDA Master Agreement
- Repurchase agreements, forward contracts, commodity contracts, swaps, rated securitisations and structured financings that include ‘flip clauses’
- Master netting agreements
- Lease contracts in respect of aircraft objects in aviation transactions (*Mobile Equipment (Cape Town Convention) Act 2013* (Cth) and *Protocol on Matters Specific to Aircraft Equipment*)
- Securitisation arrangements involving special purpose vehicles
- Securities settlement facilities

- Covered bond transactions
- Debt factoring agreements
- Real Time Gross Settlement arrangements
- Contracts for personal services that can only be performed by a particular person, for example a musical performance.