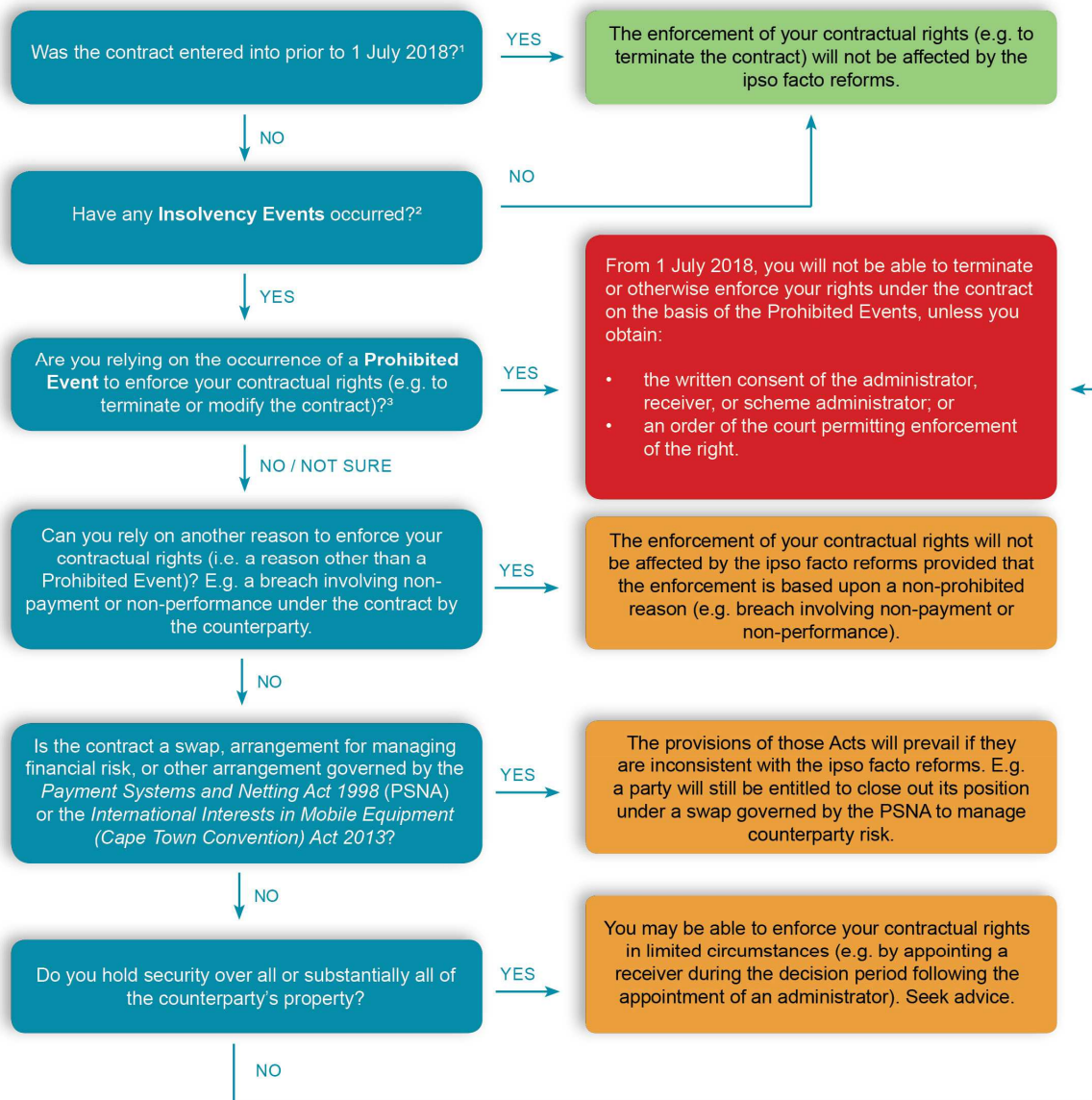


IpsO facto reforms | Can I enforce my contractual rights?

IpsO facto clauses are contractual provisions that allow a party to terminate or modify a contract on the occurrence of a specified event.

The Commonwealth Government has introduced reforms which will limit the rights of a party to enforce ipsO facto clauses in certain insolvency scenarios. The reforms come into effect on 1 July 2018.

This flowchart is designed to assist in determining whether these reforms will impact upon the exercise of your contractual rights.



¹ If the original contract was entered into before 1 July 2018, but it was amended after 1 July 2018, the answer to this question is 'yes'.

² **Insolvency Events** occur when a counterparty:

- has an administrator appointed to it;
- has a controller (e.g. receiver and manager) appointed over all of its assets; or
- becomes subject to a scheme of arrangement to avoid being wound up in insolvency (or becomes the subject of an application for such a scheme, or it announces it will make such an application).

³ **Prohibited Events** cannot be relied on to enforce your contractual rights against a counterparty. They include:

- the occurrence of an Insolvency Event;
- the financial position of a counterparty which experiences an Insolvency Event; or
- a reason which is, in substance (even if not in form), one of the above.

This update does not constitute legal advice and should not be relied upon as such. It is intended only to provide a summary and general overview on matters of interest and it is not intended to be comprehensive. You should seek legal or other professional advice before acting or relying on any of the content.

Copyright ©2018 Gadens. All rights reserved.