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INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018 (ACT 40 OF 2018)

INSOLVENCY, RESTRUCTURING AND DISSOLUTION (PRESCRIBED ARRANGEMENTS AND PROCEEDINGS) REGULATIONS 2020

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
 2. Definitions
 3. Prescribed arrangement, etc., under sections 64(12)(a), 65(7)(a), 95(3)(a) and 96(5)(a) of Act
 4. Prescribed proceedings, etc., under sections 64(12)(b), 65(7)(b), 95(3)(b) and 96(5)(b) of Act
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In exercise of the powers conferred by section 449 of the Insolvency, Restructuring and Dissolution Act 2018, the Minister for Law makes the following Regulations:

Citation and commencement

1. These Regulations are the Insolvency, Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020 and come into operation on 30 July 2020.

Definitions

2. In these Regulations —

“admiralty proceedings” means any proceedings in which the admiralty jurisdiction of the High Court under section 3 of the High Court (Admiralty Jurisdiction) Act (Cap. 123) is invoked by an action in rem brought against a ship under section 4(2), (3) or (4) of that Act;

“business trust” has the meaning given by section 2 of the Business Trusts Act (Cap. 31A);

“collective investment scheme” has the meaning given by section 2(1) of the Securities and Futures Act (Cap. 289);

“commodity” means —

- (a) any produce, item, goods or article; or
- (b) any index, right or interest in any produce, item, goods or article;

“derivatives contract” means any contract or arrangement under which —

- (a) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and
- (b) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:
 - (i) the value or amount of one or more underlying things;
 - (ii) fluctuations in the values or amounts of one or more underlying things,

but does not include —

- (c) securities;
- (d) a deposit as defined in section 4B of the Banking Act (Cap. 19), where the deposit is accepted by a bank licensed under that Act, or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) or holding a merchant bank licence or which is treated as having been granted a merchant bank licence under the Banking Act;

(e) a deposit as defined in section 2 of the Finance Companies Act (Cap. 108), where the deposit is accepted by a finance company as defined in that Act; and

(f) a contract of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act (Cap. 142);

“financial instrument” has the meaning given by section 2(1) of the Securities and Futures Act;

“master netting agreement” means an agreement under which 2 or more claims or obligations under one or more of the following:

(a) securities contracts;

(b) derivatives contracts;

(c) securities lending or repurchase agreements;

(d) spot contracts,

can be converted into a net claim or obligation, and includes an agreement under which actual or theoretical debts arising under or in connection with a contract or an agreement mentioned in paragraph (a), (b), (c) or (d) are calculated and —

(e) set off against each other; or

(f) converted into a net debt;

“securities” means —

(a) shares, units in a business trust, units in a collective investment scheme or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership; or

(b) debentures,

but does not include —

(c) any bill of exchange; or

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- (d) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere;

“securities contract” means a contract for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

“securities lending or repurchase agreement” means an agreement under which —

- (a) a person (called in this definition the transferor) transfers the legal interest in any certificates of deposit, banker’s acceptances or securities (called in this definition the transferred securities) to another person (called in this definition the transferee);
- (b) the transferor re-acquires the transferred securities or acquires equivalent certificates of deposit, banker’s acceptances or securities from the transferee —
- (i) at a later time not later than one year after the date of the transfer mentioned in paragraph (a);
or
- (ii) on demand;
- (c) the transferor retains the risk of loss or opportunity for gain in respect of the transferred securities;
- (d) the transferor does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the transferee under the agreement; and
- (e) if any distribution is made in respect of the transferred securities during the period between the date of the transfer mentioned in paragraph (a) and the date of the re-acquisition mentioned in paragraph (b), the transferor receives from the transferee the distribution or compensatory payment equal to the value of the distribution;

“security interest arrangement” means an arrangement under which —

- (a) a mortgage, charge, pledge, lien or other type of security interest recognised by law is created; and
- (b) that mortgage, charge, pledge, lien or other type of security interest secures an obligation under any of the following:
 - (i) a securities contract;
 - (ii) a derivatives contract;
 - (iii) a master netting agreement;
 - (iv) a securities lending or repurchase agreement;
 - (v) a margin lending agreement;

“spot contract” means a contract or an arrangement for the sale or purchase of any currency or commodity at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the currency or commodity immediately or within a period which must not be longer than the period determined by the market convention for delivery of the currency or commodity;

“underlying thing” means —

- (a) a unit in a collective investment scheme;
- (b) a commodity;
- (c) a financial instrument;
- (d) the price of transporting goods as freight or of hiring vessels for the purpose of transporting goods;
- (e) the credit of any person;
- (f) a numerical indicator, model or statistic relating to weather;
- (g) a numerical indicator, model or statistic relating to the emission of pollutants;
- (h) real property;

- (i) a numerical indicator, model or statistic that is a measure of economic performance or economic conditions; or
- (j) any other thing by reference to which the value of a derivatives contract is determined or from which the value of a derivatives contract is derived;

“unit” has the meaning given by section 2(1) of the Securities and Futures Act.

Prescribed arrangement, etc., under sections 64(12)(a), 65(7)(a), 95(3)(a) and 96(5)(a) of Act

3. The exercise of all legal rights under any security interest arrangement is prescribed for the purposes of sections 64(12)(a), 65(7)(a), 95(3)(a) and 96(5)(a) of the Act.

Prescribed proceedings, etc., under sections 64(12)(b), 65(7)(b), 95(3)(b) and 96(5)(b) of Act

4. The commencement (but not the continuation) of any admiralty proceedings is prescribed for the purposes of sections 64(12)(b), 65(7)(b), 95(3)(b) and 96(5)(b) of the Act.

Made on 16 June 2020.

LOH KHUM YEAN
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Ministry of Law,
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