Article Information

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Insolvency Update: Proposed Amendments to Personal Property Securities Act 2010 regarding deeming of leases for serial numbered goods as PPS leases

On 19 March 2014, the Personal Property Securities Amendment (Deregulation Measures) Bill 2014 was introduced to the Federal Parliament to amend provisions of the Personal Property Securities Act 2010 (Cth) with a view to reducing the costs of complying with the PPSA for small and medium vehicle and equipment hiring businesses.

The proposed amendments relate to the PPS Lease, a fundamentally new concept introduced by the *Personal Property Securities Act* 2010 (Cth) (PPSA).

If a lessor with goods subject to a PPS Lease fails to register its interest on the Personal Property Securities Register (PPSR), the goods may be deemed by the PPSA to be property of the lessee if the lessee were to become insolvent. This can result in goods owned by the lessor vesting in the trustee in bankruptcy, administrator or liquidator of the lessee (pursuant to section 267A of the PPSA) – at odds with the concept of ownership of goods that formed a fundamental part of Australian law in the past.

Certain lease and bailment arrangements are deemed by section 13(1) of the PPSA to be a PPS Lease. These include any lease, inter alia:

1. for a term of more than one year,
2. for an indefinite term; and
3. capable of being automatically renewed for a period of more than one year.

Leases of "serial numbered goods", being goods capable of being described by serial numbers such as motor vehicles, machinery and some types of equipment, are deemed to be PPS Leases if, inter alia, they are for a period of 90 days or more.

This significantly shorter period for the deeming of leases of serial numbered goods has resulted in significant confusion and expense being incurred and has placed lessors of equipment, including in the construction industry, at considerable risk if goods have been leased to a lessee who subsequently becomes insolvent.

The Bill proposes to amend the PPSA to remove the separate deeming provisions for leases of serial numbered goods. If the Bill is passed, all leases of goods, regardless of whether they are serial numbered goods or not, will only be deemed to be PPS Leases if the lease is:

1. for a term of more than one year,
2. for an indefinite term; and
3. capable of being automatically renewed for a period of more than one year.

This will result in a reduction in the number of registrations required for leases of serial numbered goods and will grant some protection to small and medium businesses whose customers become insolvent.

This may be a first step in an attempt to simplify as much as possible a sometimes unwieldy and confusing piece of legislation.

If you would like to discuss this Bill and its effects further, please contact our **Restructuring & Insolvency** team.