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Potential Changes to PPS leases?

PPS LEASE ISSUES

The introduction of the Personal Property Securities Act 2009 (Cth) "PPSA" in 30th January 2012, created a lot of confusion amongst producers/suppliers in relation to recoverable rights over their assets/products in the event of an external administrator appointment, and five (5) years on, based on Court cases it appears confusion still remains.

Under the current legislation a PPS lease is deemed to be a security interest under the PPSA which means that a lessor or bailor whose transaction comes within s13 must perfect under the PPSA (usually by registration on the PPSR) even if the arrangement is not designed to provide security. A failure to perfect under the Act will mean that a deemed secured party (ie the bailor or lessee) will risk losing their goods in a priority contest. Most of the cases determined by the Courts under the PPSA involve PPS leases, so the proposed changes are aimed at easing some of the concerns of the equipment hire industry.

WHAT ARE PROPOSED CHANGES AND HOW WILL THEY AFFECT YOUR CLIENTS?

Recently the Federal Government introduced a Bill into parliament which seeks to amend the PPSA by extending the minimum duration of Personal Property Securities (PPS) leases (and bailments) from more than one year to more than two years; and provide that leases (and bailments) of an indefinite term will not be deemed to be PPS leases unless and until they run for a period of more than two years. The bill also looks to remove the much criticised indeterminate category of PPS lease or bailment altogether.

CONCLUSION

If Bill becomes law, this should significantly reduce the regulatory impact the PPSA is having on short-term hire and rental business. As these type of businesses almost exclusively use indefinite term leases which run for less than a week and rarely exceed two years.

Furthermore with the Government commenting that the combination of increased administrative burden and the risk of losing key business assets has created an imminent need for PPSA reform, it will be interesting to see if there will be any further changes to the already misunderstood PPSA regime.

2017 IN HOUSE TRAINING

As always we at Chamberlains SBR are more than open to coming to your firm and running an in house session to your middle management and staff should you be interested in arranging a free session do not hesitate to contact us.

As always, if you or your clients need advice on any insolvency or business turnaround matters do not hesitate to contact us.

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