

PPS Leases: 50 million reasons to register



The voluntary administration of Arrium Limited and 94 of its subsidiaries ('the Arrium Group') is a timely reminder to reconsider the protection available under the *Personal Property Securities Act 2009* (Cth) ('PPSA') to minimise the impact of bad debts from customers of all sizes.

While the Arrium Group is in the early stages of administration we anticipate that there will be significant fallout from:

1. Creditors failing to register their security interest in collateral (assets) in the possession of the Arrium Group.
2. Creditors failing to register their security interest against the correct entity in the Arrium Group.

The recent Forge decision of the NSW Supreme Court¹ has once again demonstrated the significant cost of failing to comply with the PPSA.

In that case, *General Electric International Inc ('GE')*, the lessor of mobile turbine generators to *Forge Group Power Pty Limited ('Forge')*, failed to register on the PPSR² and lost its rights to over \$50 million worth of equipment under the PPSA 'vesting' provisions³ when Forge appointed voluntary administrators.

The Facts

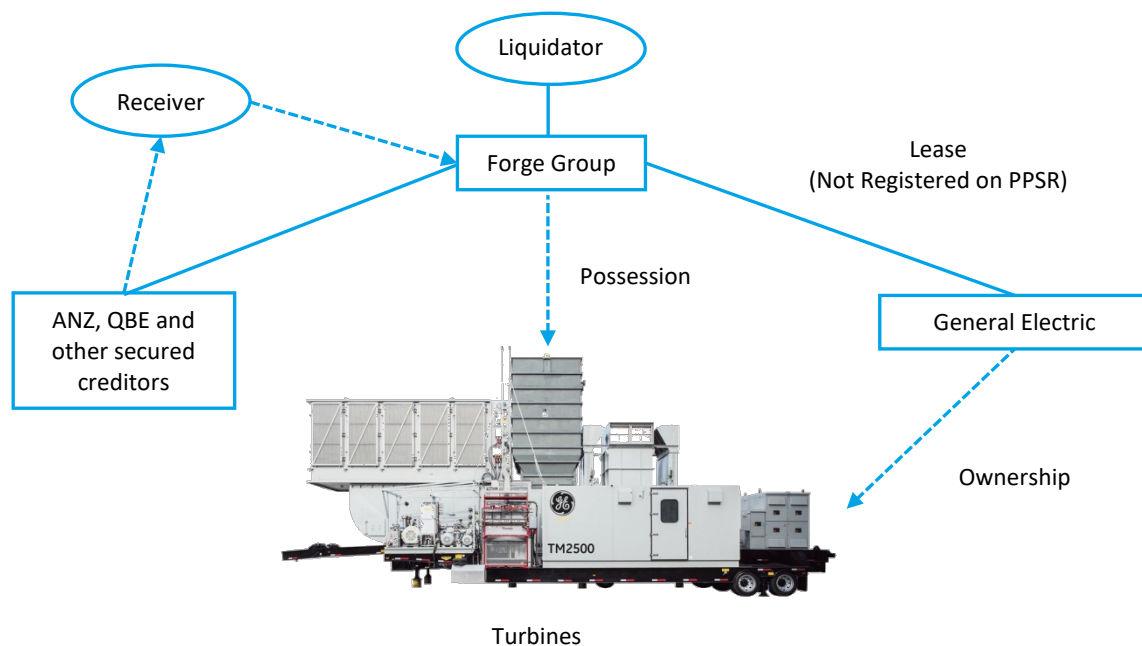
- In March 2013, GE agreed to lease four mobile gas turbine generators to Forge for a two year fixed term ('the Lease').
- Shortly after the turbines had been installed Forge appointed voluntary administrators and subsequently went into liquidation.
- As at the appointment of the administrators, GE had not registered a security interest on the PPSR in respect of the turbines.

¹ *Forge Group Power Pty Limited (In Liquidation) (Receivers and Managers Appointed) v General Electric International Inc* [2016] NSWSC 52

² Personal Property Securities Register

³ *Personal Property Securities Act 2009* (Cth) Section 267

The central issue was whether the Lease constituted a PPS lease and therefore, as a result of GE's failure to register its security interest on the PPSR, the turbines vested in Forge pursuant to the PPSA.



A PPS Lease includes a lease or bailment of goods for more than one year, however there is a general exception for parties who are not regularly engaged in the business of leasing goods.⁴

GE argued that the Lease of the Turbines was excluded from the operation of the PPSA because:

1. GE was not regularly engaged in the business of leasing goods; or alternatively
2. The turbines had become fixtures and therefore the PPSA did not apply.⁵

Decision

The Court found that:

1. GE was regularly engaged in the business of leasing goods as consideration must be given to GE's business activity as a whole, both overseas and in Australia.
2. The turbines were not fixtures as:
 - They were designed to be demobilised and easily moved.
 - They were only intended to be on site for a temporary period of two years.
 - Forge was contractually obliged to return them at the end of the rental term.

Conclusion

As a result of the Court's decision, GE lost any interest it had in the turbines, allowing the liquidators to realise the turbines for the benefit of Forge's creditors generally.

A number of clients will argue that the cost of compliance is too great; however the Forge case illustrates that a small registration fee of \$7.40 could have protected assets worth over \$50 million. The cost of non-compliance is a significantly greater risk.

⁴ *Personal Property Securities Act 2009* (Cth) Section 13(2)(a)

⁵ *Personal Property Securities Act 2009* (Cth) Section 8(1)(j)