Financial Services Flash

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Proposed Regulations Poised to Impact Saskatchewan Vehicle "Dealers"

By Daniel Everall*

The Saskatchewan government has requested comments on the proposed overhaul of its consumer protection regime. As part of the changes, the *Motor Dealers Act* (the "**Old Regime**") would be repealed and replaced by *The Consumer Protection and Business Practices Act* and the *Vehicle Dealers Regulations* (collectively, the "**New Regime**"). Companies who sell or lease, or offer to sell or lease, various types of vehicles should be aware that their licensing obligations may change.

The Canadian Finance & Leasing Association (the "**CFLA**") and other authors have noted concern about the scope of the proposed licensing requirements. Under the New Regime, a "dealer" is a person carrying on the business of a dealership or who holds himself or herself out as a dealer. A "dealership" is a business that: (i) sells or leases vehicles or offers vehicles for sale or lease; (ii) solicits orders for the future delivery of vehicles; (iii) takes vehicles on consignment; or (iv) advertises the selling, leasing or consignment of an interest in a vehicle. Any material increase in scope would come from the inclusion of leasing activities, which were not regulated under the Old Regime, and which may result in the regulation of more businesses, such as fleet lessors. Most other activities under the definition in the New Regime were already caught by the Old Regime.

While the New Regime may appear expansive at first blush, one should note that a person must be carrying on business as a dealer before requiring a licence. Also constraining the licensing requirements is an exception for a person, other than a wholesaler, who only sells vehicles directly to dealers; a "wholesaler" is a person "in the business of buying vehicles to sell exclusively to dealers." Between these narrowing considerations, it appears unlikely that, lessors aside, a torrent of new licensing requirements will follow the changes. For example, lenders selling vehicle collateral should not be caught by the licensing requirement, especially if they only sell to dealers; they are selling vehicles as part of a lending business, not as part of a dealership or wholesale business. Similarly, asset purchase agreements between two commercial parties are unlikely to be caught; the one-off sale of assets between commercial entities does not rise to the level of carrying on the business of a dealer. However, additional narrowing clarifications to this extent would be welcome.

Another factor circumscribing any perceived expansion of the licensing requirements is the similarity between the New Regime's definition of "vehicles" and the Old Regime's definition of "motor vehicles." The substantive content of the two definitions is very similar. Both

concern self-propelled vehicles used on highways and include snowmobiles.

Perhaps of greatest concern are the expansive and uniform regulations imposed on all dealers, regardless of the specifics of their business (i.e. the New Regime appears to be a blunt instrument). The New Regime requires, among other things, that security of at least $15,000 be posted to secure a licence, that mandatory warranties for used vehicles be provided, and that deals be voidable if dealers fail to provide prescribed disclosure. The CFLA has recommended that not all dealers be regulated in the same manner.

Aird & Berlis LLP will continue to keep you updated on these evolving regulations which may impact your business. We hope that the ongoing consultation process will result in a more nuanced regime appreciative of the different businesses caught by these licensing requirements.

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