

## Personal Property Securities Act (PPSA)

Does your business:

- Borrow or lend money?

- Purchase or sell goods on agreement, assignment or credit?

- Grow crops or raise livestock?

- Own/lease machinery or vehicles?

If so, the PPSA will affect you.

### What is PPSA?

The PPSA is new legislation which will extensively change the way in which security interests in personal property are dealt with across Australia. The legislation will lead to the creation of an online Personal Property Securities Register ("PPSR") in which any holder of a security interest in personal property must register to ensure they have a priority claim to that property.

Legal title is no longer enough. This legislation overturns fundamental personal property law concepts. You need to understand how these changes affect the way in which you conduct your business. This legislation could have a significant impact on suppliers of 'retention of title' (ROT) goods or other equipment where a security interest is required to be registered.

Changes to the way in which security interests in personal property are dealt with across Australia

### Why is this important?

The PPSA represents a fundamental change in securities law. The scope of PPSA is very broad and applies to:

- Interests in all property except land
- Interests granted by all entities (i.e. companies and individuals)
- Not only traditional securities, but ownership

### Beware

If you do not comply with the requirements of the PPSA to "perfect" your security interest:

1. Another security interest may take priority
2. Another person may acquire an interest in the personal property free of your security interest
3. Your security interest may not survive the grantors insolvency

In a worse case scenario, failure to perfect your interest may result in property to which you hold title being lost to another secured party.

## What is a security interest?

Security interest means an interest in personal property provided for by a transaction that **in substance** secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

Some examples of security interests are Charges; Mortgages (excluding a mortgage over land or water rights); Conditional Sale Agreements, including retention of title arrangements; Hire Purchase Agreements; Pledges; Trust Receipts; Leases of goods; Consignments; Assignments; Transfer of Title.

In particular anyone who is a supplier of goods should pay close attention to the PPSA requirement to make sure their retention of title clause remains enforceable. The supplier or other beneficiaries of a retention of title clause will need to register their interest to ensure that the clause is enforceable and has its intended effect.

## What is perfection?

Perfection means the requirements that need to be satisfied before a security interest is enforceable against third parties and in insolvency. Perfection is achieved by:

- Control; or
- Possession; or
- Registration.

## What is priority?

- As between perfected security interests, priority is determined by order of registration of financing statements.
- A perfected security interest takes priority over an unperfected security interest.
- As between unperfected security interests, priority is determined by the order of attachment.

## Who will the PPSA affect?

It is not only companies and other commercial entities that will be affected by the PPSA.

Any person who has been granted, or who may in the future be granted, an interest

that constitutes a security interest for the purposes of the PPSA must carefully consider their position. This will apply to all arrangements involving ROT, consignment, hire purchase and leases, charges and liens.

## Commencement date

The PPSA was scheduled to commence on 31 October 2011 but has recently been deferred until January 30 2012.

## Transitional period

Existing security interests (e.g. ASIC debentures) will be migrated to the PPSR. But any security interests which are not currently required to be registrable and are therefore unregistered cannot be migrated. So if you are the owners of ROT, leased or bailed goods and want to protect your interests you must register this interest during the proposed 2 year transition period.

## Recommendation

We recommend that you review your position and contact us should you require advice.

If this affects you, you need to decide your strategy now!

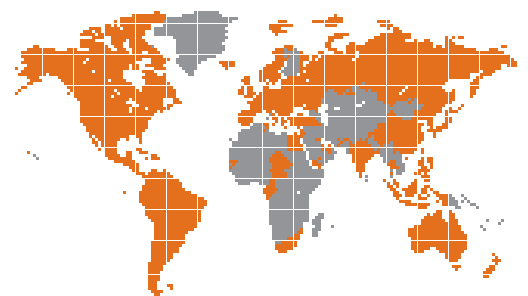
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