



31<sup>st</sup> January 2012

## **PERSONAL PROPERTIES SECURITIES REFORM**

The new Personal Property Securities Register (PPSR) opened for business on 30 January 2012. This new on-line register will help both businesses and consumers check whether the property they buy has a security interest over it by allowing a national search for security interests on a single register for a small fee.

The PPS Register is the register where details of security interests in personal property can be registered and searched. The Insolvency and Trustee Service Australia (ITSA) is the Australian Government agency responsible for administering the PPSR and is a national register. The PPS Register is a single point of contact register to assist consumers, businesses and the finance industry in general.

The PPS Register is used in many situations including:

- finance companies that provide loans on the basis that they receive a security interest in an item of personal property to register their interest in the property on the PPS Register
- business operators who sell personal property on credit, consignment, or on a retention of title arrangement to register their interest in the property on the PPS Register, and
- consumers who are about to purchase personal property, such as valuable second goods or motor vehicle, to search the register before buying to make sure that the property is free of a security interest.

### **Information recorded on the PPS Register**

Security interests can be registered on the PPS Register if they:

- are created by an agreement made in any state or territory of Australia, or
- relate to a corporation incorporated under Australian law.

This registration is known as a financing statement, which is the data entered into the PPS Register about the security interests, and which provides people who may search the Register with relevant information about the property registered.

Some non-security interests may also be registered on the PPS Register by the state and territory governments as a consumer protection measure.

## **New rules establish priority**

After they are recorded on the PPS Register, security interests will be subject to new rules about the priority order between security interests where there are a number of security interests registered against the same personal property. This will be important in the event of bankruptcy or insolvency. This will provide more certainty for finance companies, as well as business operators who supply personal property on credit, consignment, or retention of title arrangements.

## **Goods bought with a security interest attached**

If an item of personal property has been purchased, and this property has been used to secure a loan, you may wish to search the register to see if the finance company has registered the security interest and listed the correct property with the security interest attached.

## **Why register a security interest on the PPS Register?**

Businesses can improve the way they manage credit risk by registering their security interest in the goods they supply or lease on the PPS Register. If you do not register your security interest and a debtor goes into bankruptcy or is placed into liquidation, your position will be like that of an unsecured creditor. Secured creditors will be ahead of you when payments are made or assets distributed.

The Personal Property Securities Act 2009 contains rules for determining priority between security interests in the same collateral. It is therefore important to register your security interests as soon as possible.

## **What is personal property?**

Personal property, with a few exceptions under the Act, covers any property someone can own, other than land, buildings and fixtures.

Personal property includes:

- goods
- plant and equipment
- cars, boats, planes
- crops, livestock
- art
- licenses, shares, accounts receivable, contract rights, and
- intellectual property

## **Definition of security interest**

When you buy personal property on hire purchase, or use personal property as security for a loan or another type of credit providing transaction, the transaction creates a security interest in the personal property. A security interest is an interest in personal property provided for by a transaction that secures payment or performance of an obligation.

## **Parties involved in the creation of a security interest**

Usually there are two distinct parties involved in the creation of a security interest:

- the secured party (creditor, lender, supplier or lessor), and
- the grantor (debtor, borrower, supply customer or lessee).

## **Common business transactions that can create a security interest**

There are many different kinds of business transactions that can create a security interest. The list below provides some common examples:

- a fixed charge
- a floating charge
- a chattel mortgage
- a conditional sale agreement (including an agreement to sell subject to retention of title)
- a hire purchase agreement
- a pledge
- a trust receipt
- a consignment (whether or not a commercial consignment)
- a lease of goods (whether or not a PPS lease)
- an assignment, or
- a transfer of title

## **Retention of title**

Retention of title is an important example of a transaction that creates a security interest that will affect many small businesses that supply or receive goods on credit.

Under PPS reform, businesses can no longer rely solely on retaining title to their goods to reclaim them if they supply to customers who become insolvent or bankrupt – they need to register on the PPS Register.

Under the Personal Property Securities Act 2009, the supplier can register their interest on the PPS Register in order to protect that interest, and their right to repossess the goods, if the customer fails to pay.

For continuous supply of goods situations, the supplier needs only to register once for each customer – not for every supply.

## **Definition of collateral**

Collateral is personal property that is subject to a security interest. When personal property is offered as security in a lending or leasing transaction, the PPS Act refers to it as collateral.

All collateral is considered to be commercial if it is not consumer property. As a business user of the PPS Register, you would most likely need to register security interests in commercial property on the register.

## **The PPS Register and commercial collateral**

The PPS Register has arranged commercial collateral into nine categories or classes. Before making a registration it is advisable for you to consider what type of commercial property best describes your item.

The nine collateral classes are:

- agriculture – for example crops and livestock
- aircraft
- all present and after-acquired property
- all present and after-acquired property, except
- financial property
- intangible property – for example intellectual property, financial property
- motor vehicles
- other goods – for example art works, office machinery
- watercraft

Each registration you make must only relate to a single collateral class.

### **Professional advice recommended**

PPS reform may affect you and your business in a number of different ways. Seeking professional advice in relation to the specific issues affecting your business is recommended (eg reviewing business transactions, terms and conditions etc).

For more information about making a registration or in relation to the PPS reform, please do not hesitate to contact our office.

Yours Faithfully,

LOWER, RUSSELL & FARR  
Chartered Accountants



Level 1, 81 Henry Street,  
Penrith NSW 2750  
**T.: (02) 4732 3033**

[www.lrf.com.au](http://www.lrf.com.au)

### **DISCLAIMER**

*This is distributed to provide information of general interest. The content of this newsletter does not constitute specific advice. Readers are encouraged to consult their tax adviser for advice on specific matters.*