

New Personal Property Securities Law: Don't be caught off-guard!

IN BRIEF

The Personal Property Securities Act (PPSA), will come into force from October 2011 and will have a profound effect on businesses operating in Australia.

At present, each State has different laws pertaining to the registration of securities in all their various forms (e.g. Bills of sale, charges, liens, personal mortgages etc). The purpose of the Act is to consolidate the patchwork of securities registers across the Commonwealth and States and have ONE REGISTER for recording security of personal property in Australia.

Failure to register interests will prejudice the ability of your company to enforce interests such as retention of title clauses, but use of the register may also allow greater ability to recover debt in the event of a customer liquidation.

What is PPSA?

The PPSA will implement a single national law establishing a functional approach to personal property securities. It deals with creating a security interest, the priority of competing security interests (and other interests), when a person acquires personal property free of a security interest, and the enforcement of security interest.

Personal property is any form of property other than land or buildings. The Act applies to transactions which have the effect of securing a payment or other obligation by taking an interest in personal property.

The Act will be supported by a single national online personal property securities register (PPS Register). The PPS Register will replace the existing array of both electronic and paper-based national, State and Territory registers of personal property securities.

The PPS Register will go live in October 2011.

What are the transactions to which the PPSA applies?

- Bailments (e.g. fridges to display stock);
- Consignment;
- Retention of title;
- Leasing;
- Hire purchase;
- Charges; and
- Any transaction securing the performance of an obligation or payment.

As you can see, your initial understanding about personal property and securities probably didn't cover the transactions and property outlined above.

Furthermore, a traditional asset protection structure of two entities (one asset holding and the other trading with those assets) is now at risk of losing those assets, if not properly managed under the PPSA

Very simply, if you:

- Sell goods on credit; and
- Incorporate (or would like to incorporate) Retention of Title clauses; or
- Lease or hire equipment to customers or provide equipment or goods on consignment or bailment,

you WILL be affected by the PPSA and you should be aware of what this means for your business.

Do you know:

- The process under the new law to protect your interest?
- The information you will need from your clients to protect your interest?
- How to deal with certain notices you may receive in respect of your interest?
- Your rights of enforcement?
- What to do if an insolvency practitioner is appointed to your client?
- How you can take advantage of this legislation in the event of a customer insolvency?

Find out how the new law will affect you

The Personal Property Security Act will affect the way you do business. It's not a matter of if PPSA will have an application for you, but rather it's a matter of assessing the extent to which you have to apply the PPSA.

There can be considerable potential risk to businesses that ignore the PPSA, and equally, there can be significant benefits to those who understand and adopt it.

To provide our clients with the latest information and to fully outline the practical implications for your business, MGI is holding a free information session on the PPSA.

We strongly recommend your attendance, as this new law will have relevance for your business. Places are limited, so please register early.

MGI will be hosting this event in conjunction with EDX (WA), a specialist consultancy, who have developed a suite of resources to advise on the practical aspects of PPSA.

Session information

Date: Tuesday, 30 August 2011
Time: 10am til 12 noon
Venue: MGI Perth
Level 7, The Quadrant
1 William Street, Perth 6000

RSVP: Please email lana.truong@mgi-perth.com.au to register your attendance, or phone 08 9463 2463.

Registrations close Wednesday, 24 August 2011.