

Personal Property Securities Register

The Australian Government is implementing a National Personal Property Securities Register. The single national register will replace around 70 current State and Federal registers, including the ASIC Register of Company Charges and the Register of Encumbered Vehicles (REVS).

The new National Register is planned to take effect from early 2012.

GENERAL CONCEPTS

The *Personal Property Securities Act 2009* (Cth) is a law about security interests in personal property. Personal property is all forms of property other than real estate. A security interest is an interest in personal property that in substance secures payment of a debt or other obligation regardless of the form of the transaction.

This definition covers transactions currently considered a form of security such as mortgages over motor vehicles or charges in company property. It also covers forms of transactions not currently considered as a form of security as a consequence of the form of the transaction. Examples of such transactions include:

- Retention of title clauses in sale agreements whereby a purchaser has possession of personal property, but does not acquire title from the vendor until the full purchase price is paid.
- Financing leases where personal property is leased for payments that cover the cost of the personal property and the lessee has the ability to acquire title to the personal property.

In addition to this general definition, certain transactions are deemed to be security interests under the PPS Act. The deemed security interests are:

- the interest of a factor in an account
- consignment arrangements, and
- leases of personal property for a term exceeding 12 months (or three months for motor vehicles, boats or aircraft).

WHAT IS PERSONAL PROPERTY?

Personal property is any property other than land. It includes tangibles such as goods, crops and livestock, intangibles such as licenses, investment instruments, negotiable instruments and accounts.

The Act applies to personal property only if an owner of the property can transfer it to another person (even if the consent of another person is required for the transfer, or some other restriction applies before the property can be transferred).

This fact sheet is of a brief overview and is not intended to be wholly relied upon the information contained herein. No warranty express or implied is given with respect of the information provided and accordingly no responsibility is taken for any loss resulting from any error or omission contained. You should not copy, distribute, or commercialise the information unless you are authorized to do so.

WHAT IS A PERSONAL PROPERTY SECURITY?

A personal property security is an interest in personal property that secures a 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).

Under the PPS Act, a security interest in personal property will also be created by:

- a transfer of an account or chattel paper
- a lease of personal property for a term of more than one year, and
- a commercial consignment.

A personal loan that is secured against a motor vehicle is a common example of a security interest. Some other examples of security interests covered by the PPS Act include fixed and floating charges, chattel mortgages, finance leases, margin loans, commercial consignments (including retention of title arrangements) and the factoring of book debts.

Individuals are able to offer as collateral any item of their personal property including cars, yachts, paintings and shares.

Businesses are able to offer machinery, inventory and accounts receivable as collateral. Businesses are also able to grant a security interest in all their present and after acquired property. This means that businesses can borrow money against all the property they currently own or may own in the future – such as their inventory.

Other forms of personal property that may be used to secure a loan include financial products, licenses, accounts receivable, crops, and livestock.

PRE-LOADS

The Personal Property Securities Act 2009 allows for the pre-loading of financing statements for transitional security interests in the lead up to the PPS Register commencing operation. The pre-load program is being conducted with the data migration program, and is not designed to accommodate the pre-loading of all transitional security interests. The pre-load program is aimed at organisations that have a large number of transitional security interests to load and at information brokers who may represent a group of organisations with smaller numbers of such interests.

There is no legal detriment in not pre-loading transitional security interests. The protection given to a transitional security interest by the PPS Act is the same whether pre-loaded or registered within 24 months of the PPS Register commencing operation.

TRANSITIONAL PROVISIONS

The transitional provisions in the *Personal Property Securities Act 2009* (Cth) are designed to facilitate a seamless changeover from the current law to the PPS Act and explain how this change will affect security interests.

This fact sheet is of a brief overview and is not intended to be wholly relied upon the information contained herein. No warranty express or implied is given with respect of the information provided and accordingly no responsibility is taken for any loss resulting from any error or omission contained. You should not copy, distribute, or commercialise the information unless you are authorized to do so.

WHEN THE PPS ACT WILL APPLY TO TRANSACTIONS?

A key concept established in the transitional provisions is the registration commencement time (RCT). The RCT will be determined by the Attorney General in accordance with Council of Australian Government timeframes.

The Personal Property Securities Register (PPS Register) will become active after the RCT. It will only be possible to make an application for registration of a security interest on the PPS Register after the RCT. The PPS Act will apply to security interests that are created, or 'attach', after the RCT as well as transitional security interests (TSI).

A TSI is a security interest that existed at the RCT. An exception to this is the procedures and remedies for enforcing a security interest in Chapter 4 of the PPS Act which will only apply to security interests created under security agreements made after the RCT. A secured party enforcing a TSI will have to use procedures and remedies contained in the law under which the TSI was created.

MIGRATION OF SECURITY INTERESTS FROM PRE-PPS REGISTERS

All current security interests on relevant Commonwealth, state and territory registers of security interests will be migrated to the PPS Register. These include the ASIC Register of Company Charges as well as the state and territory based motor vehicle securities, cooperative charges and bills of sale registers.

Data relating to current security interests will be migrated or populated onto the PPS register in the calendar month prior to the RCT. The IT approach to migration will ensure that all registrations made on the current registers are migrated, even if they are made on the last day those registers accept new registrations.

THE ATTACHMENT RULE

A TSI is deemed to have 'attached', as defined by the PPS Act, to the collateral immediately before the RCT. This ensures that a TSI created under non PPS Act law complies with this requirement in the PPS Act.

THE PERFECTION RULE AND PRIORITIES

The key outcome of the transitional provisions of the Act is to ensure that the rights of a party to a security transaction under pre PPS law are not adversely affected by the transition to the PPS Act. This is achieved through the 'perfection rule' and the effect it has upon TSIs and other security interests.

Information on this Fact Sheet has been taken from various Fact Sheets available on the PPSR Website, www.ppsr.gov.au For more information, please refer to the website.

This fact sheet provides general information about PPS reform and does not constitute legal advice. You should seek legal advice to consider the application of the PPS Act to your individual circumstances.

This fact sheet is of a brief overview and is not intended to be wholly relied upon the information contained herein. No warranty express or implied is given with respect of the information provided and accordingly no responsibility is taken for any loss resulting from any error or omission contained. You should not copy, distribute, or commercialise the information unless you are authorized to do so.