

## Update: Its Live: Using the Personal Property Security Register

*An overview of what you need to know now.....*

### 1. PPSA has finally commenced

After numerous delays, the new Personal Property Security Register (the **PPSR**) and the legislative regime created by the *Personal Property Securities Act 2009* (Cth) (**PPSA**) commenced on **30 January 2012**.

The PPSA fundamentally changes the law and practice in relation to security interests. It replaces 70 Commonwealth, State and Territory Acts with a single comprehensive framework.

The PPSA will affect virtually every commercial transaction. Some examples include:

- supplies on retention of title terms;
- leases of goods;
- consignments and bailments;
- purchases of land;
- secured financings; and
- factoring arrangements.

#### PPSR highlights:

- **PPSR opens on 30 January**
- **Security interests must be registered on the PPSR**
- **New processes for searching and registering security interests introduced**

It also means that many of the basic processes we used to protect interests in commercial transactions will also need to change.

In particular, the establishment of the new PPSR will require changes to searches to be undertaken to identify existing security interests over assets or entities and how security interests are registered.

### 2. What is the PPSR?

The PPSR is an electronic 24/7 register to be operated by the Insolvency and Trustee Service of Australia (**ITSA**). Registration of all securities over 'personal property' will now occur via the PPSR website.

The information contained in most existing State based or Commonwealth security registers (such as the ASIC database) was migrated to the PPSR on or prior to 30 January.

It is a paperless system.

### 3. Registering securities

#### 3.1 *How do I register a security interest?*

To register a security interest, you must lodge a financing statement with the PPSR.

Log in to the PPSR portal from 30 January 2012 at:

<http://transact.ppsr.gov.au/ppsr/home>

Unlike currently, a financing statement can be registered even before the security interest is actually granted.

Similarly, when a secured party ceases to have security over personal property or wishes to change information in relation to the registration (for instance by releasing some but not all of the collateral secured), it must lodge a '**financing change statement**' with the PPSR.

#### 3.2 *How to lodge a financing statement*

Prior to lodging a financing a statement, a secured party must register as a **Secured Party Group (SPG)**. The SPG number is uniquely assigned to a secured party. As such, it can be referenced in subsequent transactions.

Financing statements are lodged via the PPSR (or SAI Global Espreon and SearchESS platforms). The website is easy to follow and it should simply be a matter of following the prompts.

In addition, tutorials on how to register and search interests on the PPSR can be found at:

[http://www.ppsr.gov.au/Information\\_resource/PersonalPropertySecuritiesRegister/tutorials/Pages/default.aspx](http://www.ppsr.gov.au/Information_resource/PersonalPropertySecuritiesRegister/tutorials/Pages/default.aspx)

#### 3.3 *Migrated Security Interests*

As part of the migration of security registers, there will be a "Find and Claim" process to enable secured parties to find and claim their migrated secured party groups (SPG) so that the associated registrations can be transferred to a new SPG (target SPG) on the PPSR which has the correct details – in particular, the correct address for service to which various notifications are sent from PPSR.

#### 3.4 *Timing of registration: company charges*

Unlike the current Corporations Act registration system, a company is not legally required to register security interests granted by it.

However, as the consequence of not doing so is that the security interest may be unenforceable in an insolvency, all secured parties will require security interests to be registered (and possibly perfected by other means as well).

Currently under the Corporations Act a grantor has 45 days to register a security interest. However the effect of changes to the Corporations Act made as a consequence of the PPSA's introduction is that failure to register a security interest granted by a company within 20 business days of its creation risks the secured party losing insolvency protection.

All security interests granted by companies should therefore be registered within the 20 business day timeframe.

### 3.5 *Special rules*

#### (a) **PMSIs**

Under the PPSA, purchase money security interests (**PMSIs**) are afforded a 'super-priority' over other perfected security interests, including prior in time all assets security interests.

Examples of PMSIs include:

- a security interest taken in collateral, to the extent that it secures all or part of its purchase price (ie a retention of title arrangement);
- a security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;
- the interest of a lessor or bailor of goods under a PPS lease;
- the interest of a consignor who delivers goods to a consignee under a commercial consignment.

The registration of PMSIs are subject to special rules, including time limits. If these are not met, the PMSI is not afforded super priority status.

In some cases a PMSI must be registered **before** the grantor takes possession of the relevant property.

#### (b) **Serial numbered goods**

Some classes of collateral must be described by their serial number when security is taken over them and registered on the PPSR.

Where collateral must be described by its serial number but the serial number provided is incorrect or missing, a buyer of that collateral will take the property free from the existing security interest.

Such classes of collateral include but are not limited to:

- Aircraft;
- IP that is a design, trademark, licence or patent;

- Motor vehicles; and
- Watercraft.

### 3.6 Lodgement fees

Some of the common fees associated with using the PPSR can be found in the table below:

Transaction type	Fee (\$)
Registration of a financing statement with no end time	130.00
Registration of a financing change statement in respect of a financing statement with no end time to include an additional grantor	130.00
Registration of a financing statement with an end time of up to 7 years	7.40
Registration of a financing change statement in respect of a financing statement with an end time of up to 7 years to extend the end date or include an additional grantor	7.40
Registration of a finance statement with an end time of between 7 and 25 years	37.00
Registration of a financing change statement in respect of a financing statement with an end time of between 7 and 25 years to extend the end date or include an additional grantor	37.00
Registration of a financing change statement which amends a financing statement if the amendment does not extend the end date or include an additional guarantor	3.70
Searching the register using a grantor's details	3.70
Searching the register using the serial number by which collateral has been described	3.70

## 4. Searching the PPSR

It will be necessary to search the PPSR when buying any asset (including land) to establish what security interests have been granted by the seller or might otherwise attached to the asset being acquired.

Searches are conducted on the PPSR website. For companies, a PPSR search only needs an ACN to be entered and relevant search fee to be paid.

Note that there are detailed rules for when a buyer acquires assets free of prior security interests. You should ensure that you understand the 'extinguishment' rules contained in Part 2.5 of the PPSA or obtain the necessary releases at or prior to any acquisition.

For instance, where an item of plant over which a security interest has been granted is sold in the ordinary course of the seller's business, the buyer will take the plant free of the security interest, unless an exception applies.

## 5. Further questions

The PPSA is a complex reform. There will inevitably be a transition period while 'market standard' approaches to specific questions are sorted through.

If you have any questions about the PPSA or the PPSR, please don't hesitate to contact:



**Peter Nankivell**

Partner

[pnankivell@herbertgeer.com.au](mailto:pnankivell@herbertgeer.com.au)

Phone: +613 9641 8633

Fax: +613 9670 5670



**Martin Irwin**

Partner

[mirwin@herbertgeer.com.au](mailto:mirwin@herbertgeer.com.au)

Phone: +613 9641 8935

Fax: +613 9670 5670