

Personal Property Securities Act: Part 2 – Case studies

Introduction

Our previous edition of [Inside Edge](#) provided a summary of the implications of the Personal Property Securities Act (“PPSA”). We also included practical tips that property owners could apply to protect their interests in property in the possession of others.

The PPSA has been in place for some time now. Over that period, we have encountered a number of situations involving the PPSA. In this article, we highlight some of the most interesting cases.

Case study 1: Groups

In August 2016, we were appointed as Administrators of two companies in a group of entities operating in the transport industry. You can see below how the entities in the group had structured the ownership and use of plant and equipment.

The owners of the vehicles (Equipment and Partnership) allowed Trading to use the vehicles on the basis that Trading paid all operating costs and lease payments. This agreement was not in writing.

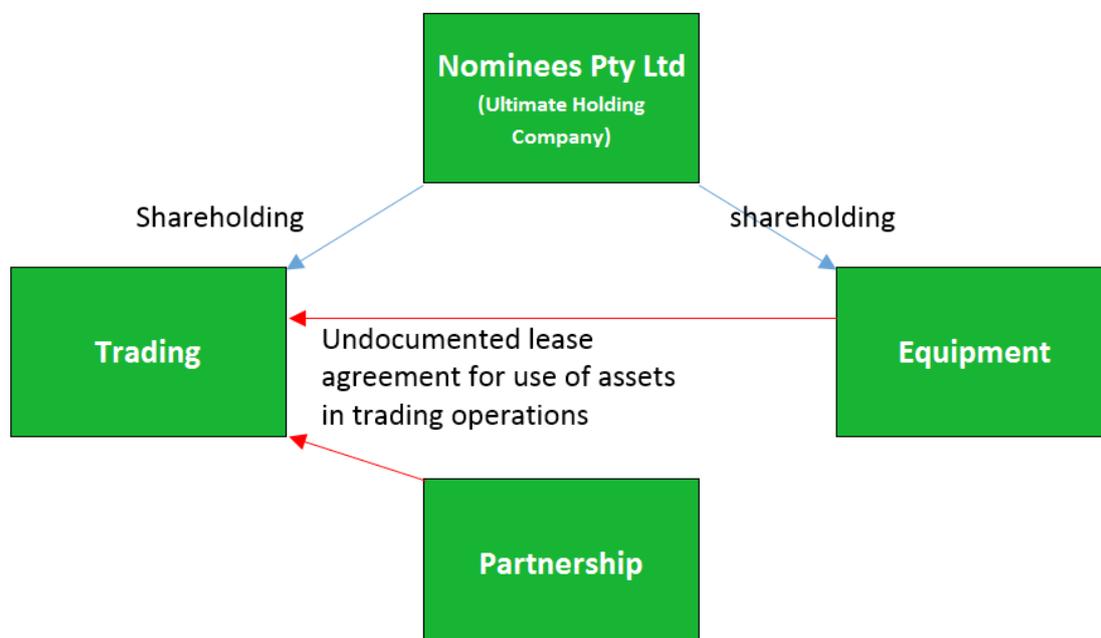
Neither Equipment, nor Partnership registered their interests in the vehicles used by Trading on the Personal Properties Securities Register (“PPSR”).

Upon our appointment as Administrators of Trading, we received advice that Equipment and Partnership’s failure to protect their interests by registering on the PPSR, meant the vehicles in the possession of Trading on the day of our appointment were “vested” in Trading.

Trading had “inherited” vehicles with a market value of more than \$1m.

This is the first time since the legislation commenced in 2012 that we had come across an issue of this type with such significant consequences for the historically recognised “owners” of the assets.

Advisors looking to structure a group’s affairs for asset protection purposes, should seek proper legal advice to document the arrangements between members of the group. This should form the basis for registering the interests of the asset-owning entities on the PPSR.



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Case study 2: Livestock

In October 2016, we were appointed as Receivers and Managers of the assets of a partnership which operated a dairy farm.

The partnership had leased and also purchased cattle on a vendor finance basis from other parties for use in the operation of the farm. After our investigations, we determined that:

- ▲ some owners failed to register their interest in the cattle on the PPSR. This resulted in the cattle forming part of the assets of the partnership;
- ▲ some owners failed to register their interest in the cattle within the required time frame (in this case within 15 business days of the delivery of the cattle). This resulted in the owners' interest in the cattle being subordinated to the interests of prior-registered security holders;
- ▲ one owner had registered their interest in their cattle against the correct partnership ABN, but the underlying documentation disclosed an incorrect ABN. Our advice was that as the underlying security agreement was incorrect, the registration on the PPSR by the owner was invalid.

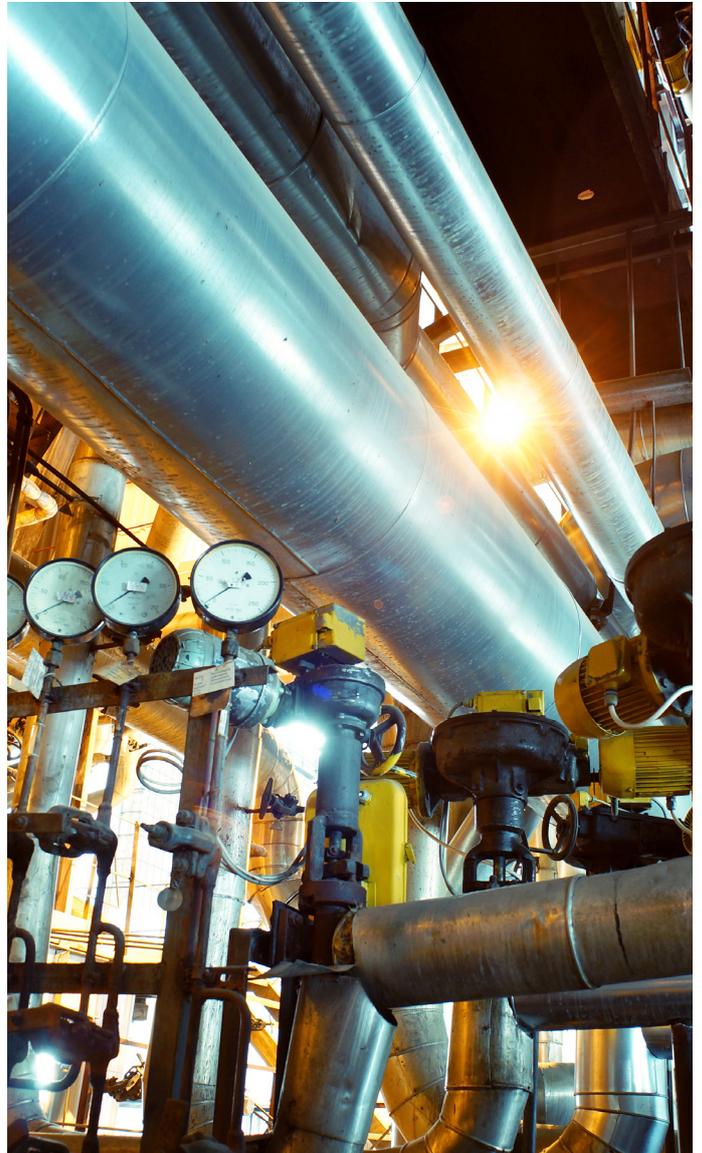
As you can see from these examples, the impact of the PPSA is not limited to goods supplied by one party to another. It also extends to other forms of business dealings.

Case study 3: Mis-registration

In January 2016, we were appointed as Administrators of a company specialising in directional drilling. One of the company's major assets was a drill with a fair market value of \$220,000. The asset was subject to a finance contract with a major bank.

A search of the PPSR failed to locate any registration against the asset and the ACN of the company. Further investigation revealed that the bank had registered against both the asset and the director's personal ABN.

This mis-registration by the bank meant that the company owned the asset immediately before our appointment as Administrators, which was therefore available for realisation and distribution to unsecured creditors of the company.



Cases

These are just a few of the recent cases determined by the courts concerning the PPSA:

- ▲ *Flown Pty Ltd v Goldrange Pty Ltd* [2016] WASC 419
- ▲ *In the matter of OneSteel Manufacturing Pty Limited (administrators appointed)* [2017] NSWSC 21
- ▲ *Power Rental Op Co Australia, LLC v Forge Group Power Ltd (in liquidation) (receivers and managers appointed)* [2017] NSWCA 8

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Summary

As you can see from these scenarios, the proper registering of an interest in property on the PPSR is important to owners of property that is to be leased or sold to other parties. Failing to do so may leave the owner with an unsecured debt.

How BRI Ferrier can help

BRI Ferrier recognises that while the PPSA is designed to provide greater certainty for stakeholders to manage their security interests in personal property, it does require technical experience and training to properly assess the risks to a specific business and comply with the PPSA.

We have extensive experience dealing with distressed businesses and formal insolvency appointments. Our dedicated team is well placed to provide strategic restructuring and insolvency advice to financiers, directors, suppliers, lessors and other key stakeholders. We can assist with determining the options available to you and create a practical solution for your circumstances.

For more information on the PPSA, and how it may affect your company or your clients, please contact [Stuart Otway](#) and [Alan Scott](#) to find out how we can support you.

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