Issue 3 - 2016

Personal Properties Securities Act: Protecting your business

Case study

An entity based in the USA made a $50 million mistake by failing to register on the PPSR four gas turbines leased to an Australian mining company, which subsequently was placed in receivership.

What is the Personal Property Securities Register (PPSR)?

The PPSR is a real time online national register on which secured parties such as financiers and suppliers can register their security interests in personal property that forms part of their common business dealings.

A 'security interest' is defined in the *Personal Property Securities Act 2009* (PPSA) as an interest in personal property that secures the payment of monies or other obligation.

Types of personal property covered by PPSR

The PPSA applies to personal property that forms part of a business transaction with a securable interest. Table 1 summarises the common personal property and business transactions affected by the PPSA. Please note that personal property excludes land, building, fixtures and other exemptions such as water rights.

Registration is the easiest way of protecting and perfecting your personal property

If suppliers fail to register or, more precisely, 'perfect' their security interest over personal property on the PPSR, they run the risk of losing ownership of their personal property to an insolvency practitioner or a secured party (e.g. financier) in a number of ways.

Traditional concepts of ownership now have little effect without registration on the PPSR. Secured parties are able to perfect their security interests and the key ways are outlined in Table 2.

Purchase money security interest (PMSI)

A PMSI is a particular type of security interest that gives a 'super-priority' over other security interests in specific personal property, including security interests (that are not PMSIs) created and registered before the PMSI.

A PMSI will typically occur in common commercial

Table 1: Common personal property and business transactions affected by the PPSA

Personal property	Business transaction with securable interests	
Goods / stock Plant and equipment Cars, boats, planes Crops, livestock Art Licences, shares, accounts receivable, contract rights Intellectual property	Fixed and floating charge Chattel mortgage Conditional sale agreement Hire purchase agreement Pledge	Trust receipt Consignment Lease of goods Assignment Transfer of title

Table 2: Key ways of perfecting a security interest

Registration	Perfection by registering security interest on the PPSR. The most common type of perfection.
Possession	Perfection by possession of personal property. Importantly, relying on this can expose secured parties to the risk of losing their priority interest in personal property in cases where other parties, such as secured creditors, have a general security agreement (charge) and perfect their security interest first.
Control	Perfection by exercising control over certain types of personal property.

transactions or agreement such as:

- Sales on retention of title or consignment: Secured party advances personal property (stock) to a customer (grantor) on credit terms or consignment
- Finance agreements: Secured party provides funding to a company (grantor) for the purchase of property at point of sale (i.e. financed motor vehicles or plant and equipment)
- Lease agreements: Secured party leases personal property to a company (grantor) including motor vehicles exceeding a term of three months and other types of personal property exceeding a term of one year.

Secured parties need to be aware that certain registration requirements must be met to validly register a PMSI. If these requirements are not met, the secured party risks losing its security interest completely. For example, a registration may be lost due to a seriously misleading defect in the registration form.

To receive super-priority, a PMSI must be registered within specific timeframes which vary according to the type of personal property (i.e. tangible or intangible) and the intended use by the grantor (i.e. inventory or otherwise).

How the PPSA affects common commercial transactions

The PPSA affects retention of title (ROT) clauses in contracts whereby a purchaser has possession of property, however does not acquire title from the vendor until the full purchase price is paid.

Under the PPSA regime, ROT or consignment agreements are considered securable interests that must be registered on the PPSR to be effective for goods supplied after 30 January 2012. This means that manufacturers and suppliers selling property on a ROT basis run the risk of losing ownership if they did not register on the PPSR.

Generally, only one registration will be required for a ROT interest provided that there is a contract to supply between the parties with terms and conditions that govern all transactions between the parties.

A supplier will need to prove the validity of its ROT claim (even if registered) by ensuring:

- underlying documentations such as credit applications and terms and conditions of invoices have ROT clauses
- the goods are identifiable to the source of supply
- the goods have become a fixture of another product.

Third party finance agreements and lease agreements

The PPSA applies to most property subject to finance or lease agreements other than certain short-term rental arrangements under three months.

If a business lends or finances plant and equipment to a company and does not register its security interest, the business may lose its title over the plant and equipment to a third party secured creditor that has registered its security interest, or to a liquidator or administrator appointed to the company.

BRI Ferrier's comments: protecting your security interest

Some tips to help mitigate the risks for suppliers:

- **When in doubt always register.** Make sure you register correctly on the PPSR as errors or omissions

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may invalidate your security interest

- **ROT supply terms comply with the statutory requirements under the PPSA.** Ensure:
  - ROT clauses are incorporated within contracts, invoices and credit applications
  - Written evidence of signed agreement
  - Registration on the PPSR as a PMSI prior to delivering goods
- **Ensure all finance agreements and lease agreements are registered on the PPSR.** Otherwise the potentially secured property may land in the hands of liquidators or another secured party with a valid registration
- **Develop policies to ensure effective and accurate registration with required timeframes.** Ensure registrations are completed within specific timeframes and registration details are correct. A secured party with a PMSI must register before the grantor takes possession of goods.
- **Upskill your staff on the PPSA regulations.** All staff (including administration staff responsible for managing registrations and sales staff transacting with customers) should be trained on the basic principles of the PPSA.

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 specific to each 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 options available to you and creating a practical solution for your circumstances.

About BRI Ferrier

BRI Ferrier is a unique affiliation of expert business recovery, insolvency, forensic accounting and advisory firms. We have over 160 staff across eleven practices in Australia, New Zealand, Hong Kong and the United Kingdom.

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The initial consultation to your client is free, strictly confidential and without obligation.

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