



PERSONAL PROPERTIES SECURITIES REFORM

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In May 2011, a new Commonwealth Register of security interests in personal property will “go live”. The Register is linked to the Personal Property Securities Act (“PPSA”), which is a major reform introduced by the Federal Government in 2009.

The PPSA provides a set of rules for the registration of interests in personal property in favour of financiers and other businesses with registrable interests. When there is a dispute, the PPSA also sets rules for priorities based on the principle first in time (based on a perfected security), with some important exceptions.

Although the underlying concepts will be the same, the Register replaces the current system of ad-hoc State based and Commonwealth based registrations. Fixed and floating charges, stock mortgages, chattel mortgages, bills of sale, liens over fruit etc will all be centralised into one single Commonwealth Register, with the aim of simplifying registration, searching and determining priorities.

The Register will be a powerful tool, not only for financiers, but for businesses who supply goods on terms including retention of title clauses, whose position in the past when competing against banks to get paid was never clear. As long as the interest is registered, businesses will be in a much stronger position to assert their retention of title clause.

What does it cover?

The Register is intended to be a register of interests in personal property, and not real property. Anyone can grant an interest (an individual, partnership, company) to anyone else. Everything from shares, licences, intellectual property to cars and watercraft is capable of being defined as personal property over which a security interest can be given. The personal property is referred to as collateral.

Specific exclusions are fixtures to land, certain interests arising under the Bankruptcy Act and certain assignments of accounts.

PMSI (Purchase Money Security Interest)

The most important development for businesses supplying goods is that their interest under a retention of title clause can now be registered. This is the Purchase Money Security Interest (PMSI for short), which, when registered, turns a retention of title clause into a super-priority with the potential to defeat even interests registered prior in time. A PMSI can be taken in any type of goods supplied to customers of a business (known as inventory) or in a specific item, as long as the interest is supported by effectively drafted terms and conditions.

The Register

The Register will be an online service, available 24 hours a day, 7 days a week to both search and register an interest. Registration on the register is critical to the effectiveness of a security interest, especially where the grantor (the person giving the security) becomes insolvent, or there is a priority dispute between security holders.

Registration involves having a financing statement that complies with the legislation, and must include certain information including (but not limited to) the secured party, the grantor, giving of notices, a description of the collateral, and if the security interest given is a PMSI.

To be effective, a PMSI must be registered over inventory before supply commences, and a single registration is sufficient for later supply. However if the supply is for a single item, a supplier has 10 days after the grantor takes possession to perfect registration of its PMSI.

Key Issues

The key issue for business is the fact of registration. Although there can be an effective security interest when a secured party has possession of collateral, this won't apply to businesses supplying goods and making sure that your interest is effectively registered at the right time is paramount.

Another key issue is documentation, and where goods are being supplied, the information that needs to be entered into the Register to ensure that the registration is effective.

Businesses who register interests on a frequent basis should give consideration to appointing a suitable person within their organisation to undertake the registration process, to ensure that it is effective.

Whilst the new regime will give businesses greater certainty with respect to interests in personal property in the future, you will need to take some time to ensure that your terms of trade comply with the regime and to also find out how the Register works in more detail. The initial investment in that process will undoubtedly pay off in the long term.

If you would like further information, please contact a member of either the Cowell Clarke Competition Law or Corporate and Commercial practice groups on T +61 8 8228 1111.

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