

Alert August 2010

Personal Property Securities Register

May 2011 is the proposed date for the commencement of a new regime for the recording of securities over properties in Australia with provisions of the *Personal Property Securities Act 2009* commencing.

The effect of this legislation is to combine a series of registers recording securities into one national register and to allow registration of a number of other types of security interests. Between now and May 2011 various registers of both the State and Federal level, including those relating to motor vehicles, boats, suppliers, stock mortgages as well as the ASIC charges register, are to be transferred onto the Personal Property Securities Register. That register is being managed by Insolvency Trustee Services Australia (ITSA).

For the first time, security interests against the property of individuals (other than for motor vehicles and boats) will be allowed to be registered.

In addition, other forms of securities such as retention of title and assignment of book debts and other types of security which have not previously been registrable will be required to be registered in order to have priority and be enforceable. It should be noted that the register does not apply to liens created by the common law e.g. a warehousemen or solicitors lien.

The legislation, further imposes a new regime of priorities and provides, that registered securities will take priority over unregistered securities unless registered in bad faith.

Registration on the register itself does not create a securing interest but rather records the fact that one exists. Copies of the documents which form the basis of security are not required to be registered as is the present case with company charges but, rather a summary of the interest over which security has been given is required to be registered, with the grantor of the security being able to dispute the width of the reported security given, once registration is made.

The property security register was made available for public viewing in July 2010 with registration of some securities also allowed on that register after that date as a result of the transitional provisions.

Following the creation of the new register, all clients who offer credit should be reviewing their security documentation in order to ensure they can take advantage of the new regime, and to ensure that their documentation is consistent with the new legislation to allow registration of their security interests.

Systems should also be put into place so as when you are engaged by new clients/customers, they sign an overriding terms of trade/credit agreement. This will then allow you to register any security you have in relation to that customer in respect of all future transactions for a period of 5 years.

It is recommended that you also arrange to review all past creditor arrangements with existing clients/customers and, if possible, have them execute new customer agreements prior to 1 July 2011, with a view to also being able to register security interests against those customers arising out of their execution of new terms.

Obviously, the nature of any security you can obtain will depend upon the nature of your business. Such security may include:

1. Retention of title;
2. Assignment of certain or class of book debts;
3. Fixed charge over certain assets or class of assets;
4. Floating charge (now called circulating security) over money in the bank, debtors and stock;
5. Crop liens;
6. Stock liens;

7. Charge over motor vehicle or boat;
8. Lien or charge over shares or other traded securities;
9. Security by way of possession of negotiable instruments or goods;
10. Leased goods in the possession of the customer;
11. Purchase money security interest i.e. where the purchaser has paid for some part of the good or security they are purchasing;
12. A lease or bailment of goods of more than 1 year duration;
13. Household goods with serial numbers; or
14. Some form of collateral security over any of the above.

In addition, procedures will need to be put into place to review any notice received from the Registrar of Personal Property Security Registry that give notice of a security interest being registered against you in order to prevent

unauthorised securities being registered. This may initially be a problem as the underlying documents that give rise to the security are not required to be registered.

All registration is to be done on line with the Personal Property Security Register which can be reviewed at www.ppsr.gov.au. A number of fact sheets are available on this website, which seek to explain the new terminology used under this legislation and how interests will be registered.

It is important to note, that in order to register it is not necessary for a security interest to have been granted, registration can also occur where it is reasonably expected a document giving rise to a security interest will be executed. This means that clients should ensure that they have in place systems to review notifications received that interests have been registered against you in order to ensure that creditors are not unjustifiably registering interest against you.

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