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THE PERSONAL PROPERTY SECURITIES ACT (2009) (Cth) HOW WILL IT WORK IN PRACTICE?

After an extended period of false starts, the *Personal Property Securities Act (2009)(Cth)* (“PPSA”) will come into force on 30 January 2012.

The PPSA is not intended to change the way in which businesses deal with each other on a day to day basis, but rather to provide a mechanism whereby a business (or individual) will be able to register a security interest over its personal property, the ultimate effect of which will preserve that security interest should the business be placed into external administration.

WHAT IS IT AND WHY IS IT NECESSARY?

The PPSA contains provision for the establishment of the Personal Property Securities Register (“PPSR”). The PPSR will be a single amalgamated register of personal property security interests (maintained by The Insolvency and Trustee Service Australia (“ITSA”). The information contained within the PPSR will replace 40 Commonwealth and state based registers that currently exist.

Examples of the types of existing security registers that are in the process of being migrated across to the PPSR includes:

- ASIC – Register of Company Charges (Commonwealth);
- Registers of Encumbered Vehicles or similar in each state;
- Registers of Bills of Sale in each state; and
- Registers of liens on wool and stock mortgages in each state.

Please note, the definition of what is personal property in the PPSA explicitly excludes real property, accordingly, land title searches will continue to need to be conducted at the relevant Land and Property Information office in each state.

Personal Property is defined as to include both tangible assets, such as cars, art, crops and machinery as well as intangible assets such as intellectual property and the rights assigned under contract.

The PPSR will act as a public noticeboard that will record the nature and type of security which a business entity (or individual) has granted to another party in return for being lent money or being provided credit. The PPSR will not become the final arbiter in disputes between competing security interests, rather it will act as an historical record to assist in determining which party will receive a priority in the event of insolvency or default.

NEW TERMINOLOGY

The legislation introduces a number of new terms, some of the key terms include the following:

Attachment:	The grantor has rights in the collateral, and the secured party gives value.
Circulating Security Interest or Security Interest In Circulating Assets:	Terminology that will be used to replace the existing concept of a Floating Charge Asset
Collateral:	Property subject to the security interest/acting as security
Debtor:	Person who owes the secured obligation
Grantor:	Person granting security interest
Perfection:	Advertising and registration of all finance agreement to the world by either: 1) Registration, 2) Control, 3) Possession or 4) Temporary Perfection
Personal Property:	All forms of property except real estate
Purchase Money Security Interest:	Security for unpaid purchase price where a new asset is acquired
Priority time:	Time at which security interest becomes perfected
Security Agreement:	Financing agreement, mortgage charge etc.
Security Interest or Non Circulating Security Interest:	Terminology that will be used to replace the existing concept of a Fixed Charge Asset
PPSA Retention of Title Property:	Retention of title transactions, leasing finance, hire purchase arrangements, consignments
Serial Numbered Goods:	Aircraft and engines, IP, motor vehicle, watercraft

In order to reflect the changes that will be enacted by the PPSA, there will be a significant number of amendments made to the *Corporations Act (2001)*(Cth) to accommodate the new paradigm. Whilst most of the changes are a consequential result of the changes to terminology brought about by the PPSA, there will also be more pragmatic changes, such as; closing the Register of Company Charges currently maintained by ASIC, including provisions to preserve existing contractual rights and obligations and arranging and preparing for the transitional provisions contained in the PPSA.

THE END OF THE FIXED AND FLOATING CHARGE?

Key among the changes to language of business will be the removal of the existing terminology of the Fixed and Floating Charge (“**FFC**”). Whilst the new legislation does not expressly provide for the FFC, the terminology that will be used under the PPSA to describe the taking of a security interest will be changed to Non Circulating Assets (Fixed Charge Assets) and Circulating Assets (Floating Charge Assets). Such securities will be known collectively as ‘general security agreements’.

RETENTION OF TITLE ARRANGEMENTS

The PPSA will also for the first time provide the formal process for a business to register (and perfect) its security interest over assets supplied in the course of its enterprise. The benefit of these changes to a supplier is that the PPSA provides for a clear and established set of rules that need to be followed in order for the supplier to retain their security interest in the goods in the event of the purchaser’s (or lessee’s) default or insolvency.

WHAT NEXT?

Everyone in business should presently be asking themselves what the PPSR will mean for them. Some of the issues that a business will need to consider when assessing the potential impact of the PPSR on their business includes:

- Does the business include Retention of Title terms and conditions on its tax invoices?
- Does the business provide stock or inventory on credit terms?
- Does the business extend loans which are currently unsecured?
- Is the business involved with Bills of Sale, stock, wool and crop mortgages?
- Does the business hire or lend equipment to third parties for an indefinite term or for a period of more than one year and which remain outside the direct control of the lender?

If the answer to any of these questions is “Yes”, then the business should consider their position and make appropriate arrangements to ensure that their interest in the asset (including stock held by third parties for which they have not been paid) is recorded.

The PPSA has allowed a two year transitional period commencing on 30 January 2012 to allow businesses to adapt to the new legislation and properly record and perfect their security. Key to the transitional provisions is that the supply arrangements must have been entered into prior to the commencement of the PPSA.

Supply arrangements entered into after 30 January 2012 are not subject to the transitional provisions.

In addition to agreements entered into after 30 January 2012, the failure of any business to take advantage of the two year transitional period, will mean that any security interest that has not been recorded on the PPSR may be voided should an Insolvency Practitioner be appointed over the entity in possession of the asset. This may include the situation where the Insolvency Practitioner is appointed to an entity in possession of stock and/or plant and equipment, for which

payment remains outstanding. Notwithstanding that the original supplier of the stock and/or plant and equipment may assert a Retention of Title to the goods, if the supplier's security interest is not recorded on the PPSR, title to the goods may vest with the insolvent entity (and ultimately the Insolvency Practitioner).

HOW WILL IT WORK?

The PPSR will be available to the public via the internet using a web browser. In addition a number of existing company and personal name search providers will offer the PPSR with enhanced functionality for industry professionals, such as accountants, lawyers and credit managers.

The two main functions of PPSR website will be to:

- Manage registrations including discharges, transfers, renewals of security; and,
- Conducting searches of the register.

Managing Registrations

The generic term for the registration of assets under the PPSR is collateral. The registration over collateral is broken down into four main classes:

1. Tangible Property
 - Motor Vehicles;
 - Watercraft;
 - Aircraft;
 - Agricultural Goods; and
 - Other Goods (valued in excess of \$5,000 including goods supplied on credit under Retention of Title arrangements).
2. General Property
 - This will include fixed and floating charges currently registered with ASIC.
3. Intangible Property
 - Trademarks;
 - Patents; and
 - Plant Breeder's Rights.
4. Financial Property
 - Monetary property;
 - Chattel paper;
 - Currency; and
 - Documents of Title (e.g. Bill of Sale) that confers ownership.

SEARCHING THE REGISTER?

In the lead up to the implementation of the PPSR proper on 30 January 2012 ITSA has created a 'discovery' environment into which businesses can prepare and load dummy securities over fictitious business entities. The website also allows entities to search the recorded information and download examples of the proposed security documents.

The website can be found at:

<https://transact-disc.ppsr.gov.au/ppsr/Home>

Sample information can be searched and retrieved using the usual business entity descriptors. By way of example the following fictitious information may be used to conduct a search of the PPSR in the 'discovery' environment:

ACN 111 111 111

**Dummy Credit Card Information Number (Required to pay for the search) 3456 7890 1234
564**

Expiry Date 99/00

To begin the search, load the web address shown above into your web browser. Once the website loads, highlight the tab labelled PPSR Search, then select Search by Organisation Grantor and commence entering the company details shown above. At last count, this entity returned 20 registrations of security over all manner of collateral. The search certificates are then able to be downloaded via PDF files.

HOW TAYLOR WOODINGS CAN HELP

Taylor Woodings is an independent, national Chartered Accounting firm providing clients specialist services in Restructuring, Corporate Recovery, Advisory and Transaction Services and Forensic Accounting. With offices in Sydney, Perth, Melbourne and Brisbane, we offer our clients a truly national service.

Taylor Woodings specialises in the areas of corporate recovery and related advisory services. We provide advice to directors, financiers and other key stakeholders exposed to businesses in financial distress.

Across all appointments, we work hard to find practical solutions to the challenging situations faced with the aim of maximising the position for all stakeholders.

Taylor Woodings can provide advice with respect to the PPSA, including:

- An assessment of your business to ascertain what security interests to register;
- Training and interpretation of the PPSA; and

- Assistance with the operation of the PPSR with regard to searching and registering security interests.

Should you have any further queries in relation to the PPSR or additional training in relation to loading and maintaining information on the PPSR, or conducting searches on the PPSR, please contact one of Taylor Woodings' partners in Sydney, Perth, Melbourne or Brisbane.

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