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Legal Bulletin

GUIDE TO THE PERSONAL PROPERTY SECURITIES ACT 2009

In October the *Personal Property Securities Act 2009 (Cth)* comes into operation; this law is the most significant and far reaching law reform in years.

ALL BUSINESSES THAT BUY, SELL OR LEASE GOODS WILL BE AFFECTED

ALL BUSINESSES THAT BUY, SELL OR LEASE GOODS NEED TO REVIEW SYSTEMS PROCEDURES AND DOCUMENTATION

From October 2011 the different Commonwealth, State and Territory laws regarding personal property will come under one law known in has *Personal Property Securities Act 2009 (Cth)*.

Personal Property Securities Reform replaces the Commonwealth, State and Territory security registers with a single national electronic register and a single body of law.

This law will have a major impact on the business community. It will have a direct effect on financiers along with businesses operating across all industries – but particularly in the manufacturing, wholesale and retail sectors.

Businesses must assess how the legislation will impact on their day to day business procedures. Failure to do so could result in significant loss. On the positive side businesses that come to grips with this new legislation will have greater protection than they have ever had before.

The new law relates to personal property, so what is Personal Property?

Personal Property is extensive; it means any property other than land. It includes:

- tangible property e.g. a motor vehicle or boat; and

- intangible property e.g. intellectual property, contractual rights, book debts, business inventory or company shares.

Special rules will apply to property that may or must be described by serial number. Certain property must have a serial number:

- motor vehicles
- watercraft
- aircraft
- certain IP rights including designs, patents, plant breeder's rights trademarks or a licence over any such IP right

Security Interest on central database

It will now be possible to register your interest on a central database as a Security Interest in relation to Personal Property. A Security Interest will arise by agreement or because the new law says so.

A Security Interest will arise where an interest in Personal Property secures payment or performance of an obligation. Some examples are:

- a conditional sale agreement (including an agreement to sell subject to retention of title)
- a hire purchase agreement
- a consignment of goods
- a lease of goods

The new act deems certain transactions as automatically giving rise to a Security Interest for example:

- a commercial consignment of goods
- a Personal Property Security lease



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Businesses that provide goods on lease or hire **must** change their terms of trade to protect their assets.

What you should do?

Companies should immediately commence a review of:

- Corporate structures and the arrangements between group entities
- Standard terms of supply and trade
- Current financing arrangements and other potentially affected contracts
- Identifying the assets affected
- Identifying the transactions that will need to be registered
- Where necessary, preparing new policies concerning the requirements

For further information or advice please contact:

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ABOUT LORD COMMERCIAL LAWYERS

Lord Commercial Lawyers is Melbourne based commercial law firm. The firm is comprised of senior practitioners with extensive experience. We advise on a wide range of commercial business, migration, dispute resolution and personal law. Click here to download our corporate brochure or visit our website www.lordlaw.com.au where you will find more detail about all our areas of practice and recent publications.