

## Personal Property Security Register

It is crucial that people who have a security interest in personal property take it seriously or risk losing their security interests.

Many businesses are struggling to understand the implications of the Personal Property Security Register (PPSR).

In this article we have provided a simple summary and a timely warning about what to do, following changes that were implemented to the Personal Property Securities Act (PPS Act) in 2014.

### **The PPSR explained**

The PPSR is a national, electronic register of security interests in **personal property** which was established on 30 January 2012.

It includes security interests in goods, vehicles, intellectual property and any other personal property, but does not apply to land.

A "security interest" includes any interest in personal property which is created by an agreement that secures a payment or performance of an obligation to another person (for example a fixed and floating charge over an asset).

The PPSR is the only register which determines whether a security interest:

- is enforceable; and or
- takes priority over other interests.

### **What about a security interest granted before 30 January 2012?**

The PPSR transitional period ended on 30 January 2014 and anyone who was granted a security interest *before* 30 January 2012 needs to ensure that those interests are registered on the PPSR.

Failure to have a security interest registered on the PPSR will mean that those interests will be unenforceable if a subsequent security interest holder registers an interest on the PPSR.

## Who is most likely to be affected?

This is particularly relevant for anyone who is engaged in the business of:

- Leasing and hiring equipment;
- Supplying goods based on retention of title;
- Mortgaging equipment; and
- Imposing a charge over the property of individuals or companies as security for loan repayments.

Note: Amendments to the PPS Act which commenced on 1 October 2015 means that businesses which frequently use fixed term leases with a duration of between 90 days and 1 year over serial numbered goods such as motor vehicles, aircraft, watercraft and other items may no longer need to register those leases once the amendment takes effect.

## How you can do a search of the PPSR

Some security interests prior to 30 January 2012 have been migrated onto the PPSR (for example, charges registered on the ASIC Register of Company Charges) whilst others may not have.

Even where charges have been 'successfully' migrated onto the PPSR, issues have arisen during the migration process which mean there is no guarantee that all migrated charges are properly registered on the PPSR.

Therefore it is essential that a check be done.

To ensure you are protected it is important that you search the PPSR but before searching the online register you will need to set up an account. Once you have an account and pay a small fee you can search by serial number, individual or by company to locate a security interest.

## The consequences if you don't register

Failure to register interests on the PPSR may result in the priority of your interests being lost to other parties with competing interests.

For intellectual property interests, this is the case *even if* your security interests have already been recorded on the IP Registers maintained by IP Australia.

## **Why simply claiming a 'retention of title' won't work**

You also should register your interest in goods supplied to a customer where you and/or your business have not received full payment. This will assist in the recovery of any debt that may be owed.

Under the PPS Act a person who supplies goods on the basis that the supplier retains ownership until paid, or leases goods to a customer, can be treated as having a security interest in the goods.

A failure to register can mean that the goods are lost to their customers' creditors even though the owner of the goods has not changed.

## **Need help?**

There has been much written about the PSSA and this article is not intended to be anything but a simple 'heads up' message so you have the essential details.

Identifying the issues is one matter, but having a workable plan for you or your business is another matter entirely.

We can assist you with your due diligence enquiries and with recording your interests on the PPSR so call us on (03) 9600 0162 or email [info@lordlaw.com.au](mailto:info@lordlaw.com.au).