CLIFFORD GOULDSON
LAWYERS

CG LAW BULLETIN

ARE YOU OR YOUR BUSINESS READY FOR THE PPSA?

The *Personal Property Securities Act* ("**PPSA**") which starts on 30 January 2012 will dramatically alter the way individuals and businesses deal with personal property and the way in which security over personal property can be protected.

"Personal property" is any property except land, fixtures to land and some statutory licences. For example machinery and equipment, inventory, motor vehicles, shares, book debts, receivables, stock, crops, trademarks and patents are all forms of personal property. Your family home will not be personal property under the PPSA.

The PPSA will regulate any "security interest" in personal property. The scope of what can constitute a security interest under the PPSA is wide and will include a number of interests which the current law does not recognise as security interests. Most importantly if your business does not protect your existing or future rights in personal property you risk losing your security interest in that property. By way of example, you could lose:

- priority over secured property to another creditor; or
- title to your property if it is left in the possession of someone else (eg. if they sell it or if they go into liquidation, voluntary administration or bankruptcy).

The PPSA will affect most businesses and individuals. This letter sets out some areas affected by PPSA. If you have transactions in any of these areas or interests in these types of property, you should urgently seek advice about what steps you should take to protect your interests, if any.

AREAS WHICH THE NEW LEGISLATION MAY AFFECT

If you can answer yes to any of the questions below, you should contact us to discuss how the PPSA may affect you.

- Do you own personal property that could be in someone else's possession for longer than 90 days?
- Do you consign goods to other people to sell?
- Do you manufacture and sell goods?
- Do your conditions of sale state that you retain ownership until you are paid (i.e. retention of title clause)?
- Do you lease goods or chattels, whether on their own or as part of a lease of land?
- Do you have security over a motor vehicle, boat or aircraft?
- Do you have security over property which has serial number identification?
- Are you involved in transactions under which debts are assigned to you?
- Are your security agreements in writing?
- Are your security agreements registered on existing registers?
- Do you lend money or extend credit for the purchase of inventory or particular items of personal property?
- Do you take security over intellectual property e.g. design, patent, plant breeder's right, trademark?

- Have you granted “fixed and floating” charges or have they been granted to you?
- Do you deal in livestock, crops or equipment that are not in your possession?
- Do you buy or sell personal property either with real estate or on its own?
- Do you provide hire-purchase finance?
- Do you include charging clauses in your standard documents to give you security for an obligation?
- Do you take control of your customer’s bank accounts to secure obligations owed to you?
- Does any existing agreement to which you are a party include provisions which create security over property to secure the obligations of a party under the agreement (i.e. joint venture agreements, shareholder’s or unitholder’s agreements, licensing agreements, franchise agreements etc)?

If your answer to any of the above is yes, it is likely that the PPSA will affect you. The list of examples is not exhaustive and any person or business that deals in personal property should carefully consider the impact the PPSA may have.

REGISTRATION

A new register, called the Personal Property Securities Register (“**PPSR**”) will commence on 30 January 2012. Existing registered security interests are in the process of being “moved” from the existing Federal, State and Territory registers (e.g. ASIC charges, REVS, Bills of Sale) to the PPSR.

Security interests that are not currently registrable (e.g. chattel leases, bailments, retention of title, commercial consignments, and vendor finance arrangements) have some protection for a period of two years after the commencement date. You should register these security interests on the PPSR within that two year period if your interest in the personal property is to last longer than two years. However, in some cases, there are additional steps that a secured party should take during this transitional period to protect its interest. This will depend on the nature of the interest. Whilst there are exceptions, it is essential in most instances to register your security interests in order to obtain priority. By registering your security interest you can prevent another person taking ownership of your goods, particularly if they become insolvent (with some limited exceptions). Any delay in registering your security interest or inaccuracy in the registration could be disastrous. New security interests created after commencement must be registered quickly (there are strict time limits for some securities) and in some cases may be registered before the transaction is completed.

OUR ROLE

We are able to provide you with any advice you may need in order to protect your security interests, should you require such advice. Unless you contact us specifically asking for advice regarding the effects of the PPSA on your security interests, we will not examine documents in safe custody or on our current or closed files to identify possible risks.

As this represents a significant change to the law, we urge you to think seriously about the matters raised in this letter, as failing to protect security interests could be expensive.

We expect high demand for PPSA reviews so we ask that you contact our Business Services Team Leader Amanda Tolson as soon as possible to discuss the impact on your business.

Please do not hesitate to contact us if you have any questions or would like to discuss these matters further.

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