

Commercial Law Update

Personal Property Securities Bill: very significant commercial law reform

New law

New rules for:

- the creation, extinguishment and enforcement of security interests in personal property; and
- determining priority among competing security interests

are likely to be enacted later this year in new Commonwealth law aimed at substantively reforming the area of personal property security.

The overall purpose of the intended reform is to rationalise – in the one Act – more than 70 pieces of Commonwealth, State and Territory legislation and more than 40 different registers of security interests in personal property.

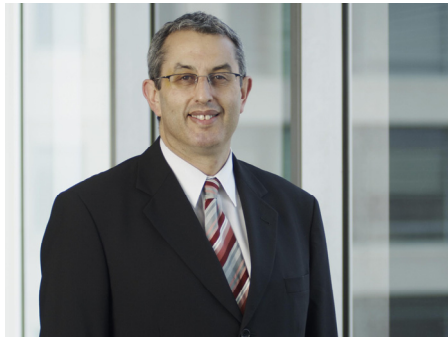
Underpinning the reform will be the creation of a single, national, technologically advanced register of personal property security interests (“the Personal Property Securities Register”) backed by an enforcement regime which will also supplement contractual arrangements.

A new national register on its way

The PPS Register will replace the existing register of company charges maintained by the Australian Securities and Investments Commission.

The register of co-operative charges established under the uniform Co-operatives legislation, the Registers of Encumbered Vehicles (REVS) maintained by a number of States and Territories and certain instruments, bills of sale and security interests in goods registers maintained by the States and Territories will also be superseded.

The IT work and planning needed to establish the PPS Register are well underway and the projected implementation date set by COAG is May 2010. The Commonwealth Government is currently considering whether or not to extend the above date.



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Personal Property Securities Bill

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Transitional period

There will be a transitional period after the commencement of the PPS Act with security interests recorded on existing registers being “migrated” across to the new PPS Register. This will avoid the need to re-register interests in the new system and will dramatically reduce transition costs for businesses.

Searching the PPS Register

Users of the PPS Register will be able to search by entering their search criteria on the website. They will also be able to undertake a vehicle search using SMS (short message service) or IVR (interactive voice response). Business users will be able to search via the B2G (business to government) channel.

What will be covered?

A personal property security is an interest in personal property (other than land) that secures a payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

A personal loan that is secured against a motor vehicle is a common example of a security interest.

Some other examples of security interests which will be covered by the PPS reform include:

- fixed and floating charges
- chattel mortgages
- finance leases
- margin loans
- commercial consignments
- retention of title arrangements
- the factoring of book debts

What it will mean for individuals and business

Individuals will be able to offer as collateral any item of their personal property including cars, yachts, paintings and shares.

Businesses will be able to offer machinery, inventory and accounts receivable as collateral. They will also be able to grant a security interest in all their present and after-acquired property. This means that businesses can borrow money against all the property they currently own or may own in the future – such as their inventory – which may make it easier and more efficient to raise debt finance.

Other forms of personal property that may be used to secure a loan include financial products, licences, crops and livestock.

Under the Exposure Draft Bill, “attachment” describes the successful creation of a security interest in personal property that can be enforced against that property. A security interest which has not attached would create merely personal or contractual rights between the parties. A security interest has been “perfected” when it has attached to collateral and any further steps needed to make the security interest effective against third parties have been taken.

In terms of priority, a perfected security interest would always have priority over an unperfected security interest – for example, where possession is not possible, or there is no control (ability to legally deal with the asset) or there has been no registration of the interest.

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