



MEMO

To: Board of Directors
From: Company Secretary
Subject: **PERSONAL PROPERTY SECURITIES**

The Personal Property Securities Act came into effect in January 2012. This Act made significant changes to the previous [loan / debt] security laws in Australia and in particular to registration, priorities, enforcement and remedies.

The Act has an impact on 'personal property securities', including:

- charges
- mortgages
- retention of title arrangements
- vendor finance
- joint venture cross charges
- hire purchase arrangements

and applies to both individual persons and companies.

Personal Property

Personal property is any form of assets or property *other than land, buildings or fixtures which form part of the land* which is capable of being pledged as security for a loan or other financial arrangement. It can include tangible assets/physical goods such as motor vehicles, machinery and equipment, livestock and crops, as well as intangible assets such as intellectual property and contingent rights and financial assets like shares.

Such property can be owned by companies, as well as individuals, and the Act covers both situations.

Personal Property Security

A personal property security (PPS) is when a secured party takes an interest in personal property as security for a loan, debt or other obligation, or enters into a transaction that involves the supply of secured finance.

Examples include:

- when a company borrows money from a bank and offers the bank collateral or security for the loan, the bank's interest over the collateral is PPS



- retention of title clauses, e.g. for inventories ('Romalpa' clause).

PPS reform brought the different Commonwealth, State and Territory laws and registers regarding security interests in personal property under one national system.

PPS Register

The national PPS Register allows lenders and businesses to publicly register their security interests. Secured parties, buyers and other interested parties can search the PPS Register to find out if a security interest is registered over personal property.

The PPS Register is an on-line service – accessible for lodgment and searching 24/7 – and is managed by the Insolvency and Trustee Service Australia (ITSA).

As a consequence of the PPS reform, a number of existing Commonwealth, State and Territory personal security registers closed and security interests registered on those registers are generally being migrated to the new national Register.

Registrations of charges against company assets previously recorded on ASIC's Register of Company Charges database were migrated to the new PPS Register.

Company charges can no longer be lodged with ASIC; they must be registered on the new PPS Register – and are referred to as 'security interests'.

However, note that details of any prior discharged/no longer current charges recorded with ASIC will be maintained on their database.

Register of Charges

One consequence of the PPS Act is that companies are no longer required to maintain a Register of Charges – as previously mandated under Section 271 of the Corporations Act.

Who is Affected

The new PPS Register is part of a reform that affects the way businesses and consumers deal with secured finance in Australia. Business owners and consumers may be affected by changes to personal property security laws as:

- buyers of properties that may be subject to a security interest
- business borrowers or consumer borrowers
- providers of credit, or
- investors who are contemplating buying into a business.



The PPS Register will also help business owners manage credit risk, check whether property planned for purchase is encumbered and search and register assets used to secure a loan.

Action Required

- ensure existing arrangements – as lender or borrower – are relevant to the new PPS regime
- separate out commercially sensitive details from agreements, so only the requirements of the Act appear in the document lodged on the PPS Register
- note double registration (of security interests) may be required in some cases – i.e., where security includes both ‘personal property’ and other property (e.g., land) and/or is governed by some state legislation (e.g., Mines Dept) – for the security to be enforceable.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.