BANKRUPTCYSOLUTIONS

PERSONAL PROPERTIES SECURITIES

INTRODUCTION

The *Personal Property Securities Act 2009 (Cth)(PPSA)* is a law about security interests in personal property.

If you provide finance, supply, lease, hire or loan assets to third parties then it is imperative that you protect your position by registering a security interest as soon as possible on the Personal Properties Securities Register (PPSR).

Registration affords you secured creditor status in the event your customer becomes insolvent. If you do not register, then you may not be able to get your goods back or receive payment if the third party business becomes insolvent. You may also lose your rights to another creditor of the third party business who has registered or 'perfected' their security interest over the property.

WHAT IS A SECURITY INTEREST?

The *Personal Property Securities Act 2009 (Cth)(PPSA)* broadly defines ' security interest ' as an interest in personal property that secures the payment of monies or other obligation.

A purchase money security interest(PMSI) is a particular type of security interest.

Examples of PMSI's include the purchase of motor vehicles where finance is provided at the point of sale, supply by retention of title clause, a lease or bailment of for a term exceeding either three months in the case of motor vehicles, boats and aircraft, or one year for other types of personal property.

A PMSI is distinguished from a standard security interest in two main ways: its manner of creation and the priority it receives relative to other security interests in the same collateral.

WHAT IS PERSONAL PROPERTY?

Personal property generally includes all property (tangible and intangible) other than land, fixtures, most water rights and some statutory licences. It includes goods or inventory, intellectual property, shares, debts and contractual rights.

WHO IS INVOLVED IN THE CREATION OF A SECURITY INTEREST?

Usually there are two distinct parties involved in the creation of a security interest:

- the secured party (creditor, lender, supplier or lessor), and
- the grantor (debtor, borrower, supply customer or lessee)

ATTACHMENT AND CREATION OF ENFORCEABLE RIGHTS

Perfection is a form of protection for a secured party that is stronger than the mere attachment of their security interest.

In order for a security interest to be perfected it must have attached, be enforceable against third parties and is either registered on the PPS Register or the collateral is in the possession or control of the secured party.

The perfection of a security interest will affect the priority it has relative to other security interests in the collateral and its status in the event of the insolvency or the bankruptcy of the grantor.

BANKRUPTCYSOLUTIONS

REGISTER YOUR SECURITY INTEREST IN TIME

When registering your security interest over a good, it must be made against a company's ACN or a business's ABN.

It is important to ensure the PPSR registrations accurately describe the parties, the collateral and the type of security interest.

Purchase money security interests (PMSIs) must be registered within the required time in order to ensure their "super-priority" status over other security interests, even if it comes later in time. For inventory, the PMSI must be registered before it is supplied to the purchaser. For non-inventory, the PMSI must be registered within 15 business days of the commencement of the security agreement.

Under section 588FL of the *Corporations Act 2001 (Cth)*, other security interests must be registered within 20 days of the date of the security agreement or at least 6 months before the "critical time" of an insolvency event to prevent the security interest vesting in an insolvent purchaser.

GET YOUR SECURITY AGREEMENT RIGHT

A security agreement must be in writing, signed by the grantor and adequately describe the collateral supplied. It is also important that the parties are clear on what the relevant security agreement is.

PAY ATTENTION TO DETAIL WHEN REGISTERING ON THE PPSR

Any description of collateral should match the description in the security agreement and be specific enough to distinguish it from other personal property in the grantor's possession. It is also important to correctly identify the grantor and this should match up with the entity that has entered into the security agreement. Suppliers should also be aware that if they provide the collateral to a party who is not the listed grantor, they risk losing their security interest.

DO YOU NEED HELP?

We invite you to give us a call, all initial discussions are free of cost or obligation. Talk to our in-house liquidators, bankruptcy trustees, lawyers or accountants about your circumstances and options.

We have offices in Sydney, Melbourne and Byron Bay together with affiliated offices in each capital city. Our nationwide network lets us service our clients' needs throughout Australia.