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entertaining the law

Personal Property Securities Act – Time’s Almost Up

Long-time readers will recall that our February 2012 discussed the implications of the introduction of the *Personal Property Securities Act 2009* (Cth) (known as the **PPSA**) which commenced operation on 1 February 2012.

At the time, we noted that “the PPSA sweeps away centuries of laws and reams of Commonwealth/ State legislation. It is the new code for the creation, enforcement and administration of security interests over *all* property other than land.”

To refresh your memory, the PPSA is the single repository for *all* security interests (including interests which ordinarily would not be thought of as security interests) over personal property.

Transitional arrangements were in place for the PPSA; these transitional provisions *largely* protected security interests which arose before 1 February 2012 (more on why we say largely in the sidebar). However, those transitional arrangements end on 31 January 2014.

The end of the transitional arrangements has many potential effects for you and your clients, including:

- Data that has been incorrectly migrated from previous registers (e.g. ASIC company charges, etc.) will cease to provide the benefit of registration.

As practitioners in this area, we are acutely aware that the Personal Properties Security Register had teething issues upon its introduction. Of particular importance is the fact that some ASIC registered charges did *not* migrate with correct secured party group data. While most of these issues have been rectified there are still some 33,000 charges which have been identified as defective – a list of the known defects is available here:

<http://www.ppsr.gov.au/AbouttheRegister/MigratedRegistrations/Pages/Migratedregistrations-knowissuesbeingprogressed.aspx>.

There may be others which have not yet been identified that are defective. The only way to know for certain is for you and your clients to perform the relevant searches.

- Interests arising/ created pre-1 February 2012 which previously did not require registration (but now fall within the scope and purview of the definition of *security interests*) must now be registered. This must occur before 31 January 2014 or risk a loss of priority/ ownership.

This includes the usual suspects in terms of interests such as: retention of title arrangements/ quistclose trusts, asset bailment arrangements, personal property leases, asset custodial arrangements, share mortgages, security interests over statutory property (e.g. intellectual property, water licences, etc.).

We have set out overleaf our previous quick checklist of issues relating to the PPSA. If you answer yes to any question, you should seek expert legal assistance promptly in relation to the PPSA and that client.

We at Baggiolegal regularly advise on commercial documentation and financing/ security arrangements. If you or your clients require assistance in understanding, or adapting to, the PPSA, please contact Andrew Baggio of this office.

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The NSW Supreme Court has recently decided that security interests arising before 1 February 2012 that were not registered at that time (but were required to be) are *not* transitional security interests subject to the transitional provisions.

This decision shows that there is no blanket rule which applies so that you can simply disregard pre-1 February 2012 interests as perfected.



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Does your client...

	No	Yes
Utilise trade terms with suppliers/ customers?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise any retention of title clause or retention of title arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise internal bailment, hire, leasing, consignment arrangements (e.g. separate entities for operations and property ownership) or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Conduct a hire or leasing business or a business that regularly makes such arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise external bailment, hire, leasing, consignment/ sales agent arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Have second ranking (or lower) security over personal property (particularly where the higher ranking security is a bank)?	<input type="checkbox"/>	<input type="checkbox"/>
Purport to take any security over another person's property in its dealings?	<input type="checkbox"/>	<input type="checkbox"/>
Have existing fixed and floating charges or security over intangibles (e.g. shares or IP) in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise vendor finance arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise conditional sale agreements or have any historic such documents in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise hire purchase agreements or have any historic such documents in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise subordination or priority arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Have any outmoded Commonwealth or State securities registrations in place (e.g. under Bills of Sale or agricultural/ livestock legislation)?	<input type="checkbox"/>	<input type="checkbox"/>
Require assistance in complying with the PPSA or training staff as to how to comply with the PPSA?	<input type="checkbox"/>	<input type="checkbox"/>

If you have answered "Yes" to any of the above, you have identified a client who needs to address the new PPSA legislation.