MARSH & PARTNERS

Your strategic business partners

Better Business Guide

The Personal Properties and Securities Act

The Personal Properties and Securities Act - What is it and how does it affect me?

What is the PPSA?

The Personal Properties and Securities Act (PPSA) essentially determines who has priority over an asset in the event of a bankruptcy / liquidation situation. In this scenario, any stock or assets that are in the possession of another party will be available to a liquidator unless a registered 'security interest' has been undertaken by the owner of the asset. Should security interests not be documented and registered, the legal owner may be treated as an unsecured creditor. Inter-entity lease and hire arrangements are not exempt from PPSA legislation.

What is the PPSR?

The Personal Properties and Securities Register (PPSR) has replaced a number of registers including the ASIC Charges Register. The PPSR allows for the registration of a security interest in personal property which can be enforced should an obligation not be met. Registration therefore ensures a secured party (such as a creditor/hirer) can prove and enforce their ownership of an asset should they need to. Personal property is generally property other than real estate. Arrangements subject to a PPS registration include charges over a company, chattel mortgages, conditional sale agreements, HP agreements, consignments, dry hire and leases of goods.

Why do I have to register?

In an insolvency or liquidation scenario, any stock or assets that are in the possession of another party will be available to a liquidator unless a registered security interest has been undertaken by the owner of the asset. Should security interests not be documented and registered, the legal owner would be treated as an unsecured creditor.

The impact of PPSA on internal business transactions

Many businesses are structured to separate their 'asset holding' from their 'day-to-day operations', a way of protecting the assets from the risks associated with a trading entity. The asset holding entity buys all of the assets needed for operating the business (land, plant & equipment etc) and these are then made available to the operating entity for use in running the business. The use of these assets by an operating entity creates a security interest under PPSA legislation.
In fact, this new legislation may pose a serious risk to businesses that rely on asset protection structures alone and they are no longer sufficiently protected. It is therefore imperative that asset owners take the necessary steps to register all security interests on the PPSR.

How do I register my assets?

You should first seek advice from your accountant and lawyer regarding which of your assets this legislation is likely to affect. Further information regarding registration can be found on the PPSR website at: **www.ppsr.gov.au**

"If security interests are not documented and registered, the legal owner may be treated as an unsecured creditor"

PPSA -
3 key steps to protect your business

Identify

01

Know when you have a security Interest - review your business structure and identify any assets that are affected.

Document

02

Having a written security agreement in place is the first requirement under the PPSA and should be tailored for a particular arrangement. A lease facility agreement will cover all future acquired property and avoids the need for a new agreement each time a new asset is purchased for the operating company.

Perfect

03

Perfect your security interests on the PPSR

Perfection is a key concept under the PPSA. A perfected asset is one which has been registered on the PPSR and is the means by which an asset holder (the secured party) can protect and enforce its security interest.

Unperfected Assets are those that are not registered on the PPSR and are therefore not protected and potentially not recoverable in a liquidation scenario.

Perfection of a security interest is a straightforward, inexpensive process and is the only way to ensure your assets are fully protected. More and more frequently, Marsh & Partners are being requested by banks to register a security interest for financed assets if they are utilised by a different entity. Failure to do so may leave you in breach of your loan terms.

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