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Personal Property Securities Act

What is the Personal Property Securities Act all about?

The *Personal Property Securities Act (2009)* commenced on 30 January 2012. **Personal property** is any form of property other than land, buildings or fixtures. It includes both tangibles (e.g. goods, cars, crops) and intangibles such as intellectual property and contract rights.

A personal property **security interest** arises when a secured party (party seeking security) takes an interest in personal property from a debtor to secure payment or performance of an obligation.

PPS will be relevant to transactions such as:

- secured loans/ finance
- sale on credit terms (retention of title arrangements)
- hire purchase agreement
- consignment of goods
- lease of goods

In conjunction with the PPS Act, a PPS online Register (PPSR) has been established by the Federal Government. The PPSR is now in operation and allows lenders and businesses to register their security interests. Secured parties, buyers and other interested parties can search the PPSR to find out if a security interest is registered over the personal property.

The new PPS law replaces the current Commonwealth and State laws, and provides uniformity. Importantly a number of existing personal property security registers have also migrated to the PPSR. They include:

- ASIC - Register of Company Charges (including provisional charges)
- Register of Encumbered Vehicles (REVS WA)
- Bills of Sale Register (WA)

What does PPS mean to businesses?

Mere ownership of personal property will not guarantee that interests in property are protected. Specifically, for supply of goods, retention of title clauses will no longer be effective.

For example, a supplier who sells goods to its customers on credit terms usually have a ‘retention of title’ clause in its terms of trade. If the customer defaults on payment (or becomes insolvent), the supplier can rely on the retention of title clause to enforce its interest in the goods.

Critically this also applies to businesses that hire their goods or lease assets to third parties.

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Using the same example, once the PPS is in force, the supplier could lose its entitlement to the goods if it had not registered a security interest over the goods (and comply with other statutory requirements).

What should businesses do to comply with PPS?

It is imperative that businesses are "PPS compliant" to ensure that their interests are not put at risk. It is therefore critical for businesses to review their business processes (as you may need to register security interests over goods, equipment etc) and ensuring that legal documentation (e.g. quotations and/or terms of trade with retention of title clauses) are updated.

Useful resources: https://www.ppsr.gov.au/

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