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A PRACTICAL GUIDE FOR USING THE PERSONAL PROPERTY AND SECURITIES REGISTER (“PPSR”)

In 2006, there were over 70 pieces of legislation regulating personal property securities in Australia. Each statute exhibited disparate priority rules and registers for the various types of security interests. This created a great deal of anguish in the legal community as there was such a breadth of law to apply. One of the beneficial outcomes of the *Personal Property and Securities Act 2009* (Cth) (the *PPSA*) was that all pieces of personal property security legislation were amalgamated into one pithy, and technical statute governing almost all personal property securities in Australia. The *PPSA* provides a centralised registration system with uniform rules and regulations for all security interests in personal property. This piece will outline the various steps required for registering a security interest and will further illustrate the purpose of perfection, the different types of security interests, and the elements required to perfect a security interest in personal property.

Firstly, we must find out what kind of security interest we are dealing with. This is not comprehensive, it is just an overview of the general types of security interests which one might consider for registration. If you sell goods on credit, extend credit to others, make loans to anyone, provide goods to others while maintaining title to the property, supply goods on consignment where the goods are stored elsewhere, supply others with products, trademarks or intellectual property, intend to take security over assets, do you have guarantors with charging clauses in your favour? Are there assets/funds held on trust by other parties? If any of the above applies to your situation then it is highly likely that the *PPSA* will be relevant to you. You should also consider how you will describe your goods, the risk of losing if you do not register, the benefit of registering, whether there is a written agreement, whether you will take priority. After you have answered these questions, and you have conducted a search of the register to determine whether your property is unencumbered by competing security interests, then you should proceed to register your interest.

REGISTRATION PROCEDURE

Once you have established a security interest exists, that there has been attachment and that there is enforceability, then you should approach the PPSR. Whether you are using legal

software or the online PPSR account, before you register anything you should conduct a search of the register to ensure the property in question is unencumbered. Once you confirm that the property in question is free of competing security interests, then you can commence registration.

1. Log into your PPSR account or your legal software account. At Mitry Lawyers, we use LEAP so this step by step guide applies to LEAP specifically.
2. Click on information and services.
3. Click on the PPSR underneath the “all services”.
4. Scroll down the page and click on the relevant action, which you want to do. This list will say: searches, registrations, secured party groups, and alerts. It is best to search the register, on search, and fill out the relevant information pertaining to the property in question.
5. Once you have completed a search and know that there are no encumbrances on the collateral you can proceed to commence registration. To begin, click “secured party group.” Then press, “create”, this name will be the one that appears on the register so ensure you carefully complete and fill in the details required. If you are an individual, click “individual”. If you are an organisation/ company, click “organisation”.
6. Once you have completed the above, click submit. This will generate a SPG number and an access code which you will receive by email (the email address you put as the address for service will be the address which you receive the email from).
7. Go back to the home page once you have created an SPG. Click on the PPSR tab again, then scroll down to click registrations.
8. Select the secured party group number that you created and click next, or alternatively enter the group number and the access code.
9. Select the type of collateral. That means, is the property used for personal consumer use? Or is the property used in the furtherance of business? If consumer, click consumer, if commercial click commercial.
10. Determine whether the collateral is transitional or not.
11. Select the class of collateral in question. This means the type of property which the security interest is being registered in. For example, is it a motor vehicle, a boat, intellectual property, or even a crane.
12. Identify the grantor. Firstly, determine whether the grantor is an organisation/company or an individual. If you are the grantor, make sure you enter your details correctly.

13. Once all these steps have been completed, save the order and go through the details carefully to ensure everything is correct. This includes reviewing the serial numbers for cars, the address of the grantor, and the group number.
14. Press next after you have reviewed the registration application. This will generate what is called a PPSR confirmation Statement which you will receive in LEAP and your emails. Further, you will also receive a token via email address. This is incredibly important and should be kept in a safe place.
15. Once you have completed all the above, you will have a registered secured interest in personal property.

Should you encounter any issues with this process you should contact the PPSR or a solicitor for assistance. It should be noted that just because a security interest is not registered, it does not mean that there is not another perfected encumbrance – for instance, if another secured party has taken possession of collateral prior to your registering a financing statement, that secured party will have an earlier perfection date than you. As such, unlike Torrens, in *PPSA* the register is not everything. This is an imperative theoretical shift in legal thinking and so legal practitioners should heed caution when applying the *PPSA*.

WHAT IS A SECURITY INTEREST?

Identifying whether a security interest exists is axiomatic to ensuring the validity of any registration – because, unlike the Torrens system, registration does *not* confer validity. Rather, if we register something which is not actually a security interest, our registration has no effect whatsoever, and our clients will not be afforded any protection from this registration. There are two main types of security interests and they are a security interests in substance;¹ and deemed security interests.² Some additional security interests to be familiar with include PPS leases (bailments); and Purchase Money Security Interests (PMSI).

ELEMENTS REQUIRED FOR PERFECTION

Generally, once a security interest is enforceable against third parties, perfection may be obtained either by taking possession or control of the collateral, or by registering a financing

¹ *Personal Property and Securities Act 2009* (Cth) s 12(1) (emphasis added).

² *Personal Property and Securities Act 2009* (Cth) s 12(3).

statement on the PPSR. Now that we know our security interest exists, we want to achieve perfection. Perfection is the highest level of protection available to a secured party under the *PPSA*. For a security interest to become perfected, it must have first attached to the property, and be enforceable against third parties. If you register your interest without these elements having occurred, then your registration will have no weight. It should also be noted that registration is not the only method of perfection – possession and control will also be enough in some circumstances. As such, you must ask yourself the following questions before you can achieve perfection. Does a security interest exist (either in-substance, deemed, or both)? Has the security interest attached? Is the security interest enforceable against third parties?

ATTACHMENT

A security interest must be attached to the collateral for it to be enforceable against the grantor. Effectively, until the security interest attaches, it is of no effect. A security interest attaches to collateral when³ the grantor has rights in the collateral, or the power to transfer rights in the collateral to the secured party; or where value is given for the security interest; or when the grantor does an act by which the security interest arises. This means, that your client must have some right or claim to the collateral for there to be effective attachment. This right or claim to the collateral doesn't necessarily need to be ownership - possession can be enough.

ENFORCEABILITY

Section 20 of the *PPSA* governs the enforceability of security interests against third parties. A security interest is enforceable against a third party in respect of collateral only if⁴ the security interest is attached to the collateral and one of the following applies: the secured party possesses the collateral; or the secured party has perfected the security interest by control; or a security agreement that provides for the security interest covers the collateral in accordance with subsection (2).

CONCLUSION

³ *Personal Property and Securities Act 2009* (Cth) 19 (1).

⁴ *Personal Property and Securities Act 2009* (Cth) s 20.

There is no question that the *PPSA* is a complex piece of legislation. On the one hand, it is mostly applied by legal practitioners and experienced business people. Ironically, even these people will have difficulty where they have not familiarised themselves with the legislation, the processes, and the various steps that must be satisfied before registration. Further, many of the PPSR users will have no legal training or experience with the *PPSA*.⁵ This is incredibly problematic as it will lead to ineffective perfection and invalid registrations, not to mention a high risk of losing out on valuable personal property for many individuals and companies. In addition to the daunting nature of the register, there is also the concern that registering one's security interest on the register is not enough. As a rule, being preventative in your application of the *PPSA* will ensure the best possible form of protection for your clients interest. For the most part, where there is a security interest that is attached to collateral which is enforceable against third parties, and perfection has taken place (usually through registration, possession or ownership) you will have protected yourself, your client and their security interest to the best of your ability and covered all possible bases.

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⁵ Bruce Whittaker, Partner at Ashurst, Review of the Personal Property Securities Act 2009, Final report, published by the Commonwealth of Australia 2015, 157, 6.1.1.