Personal Property Securities Act

The PPSA or Personal Property Securities Act 2009 (PPSA) came into effect on 30 January 2012. This new legislation will affect the majority of businesses and it is imperative to understand how this new legislation will affect you.

There is a two year transition period from this date, but businesses should be prepared early to take full advantage of the new system.

The PPSA will require the registration of interests in personal property <u>that have not previously been registered.</u> Examples include:

- Fixed and floating charges
- Long term and finance leases of goods
- Chattel mortgages
- Hire purchase agreements
- Conditional sale agreement (including retention of title arrangements)
- Retention of title arrangements ["ROT"]
- Consignment of goods
- Factoring

Personal Property is basically any asset other than land and includes:

- Motor Vehicles
- Plant and Equipment
- Stock
- Intellectual Property & Intangibles
- Accounts Receivable.

This law incorporates a <u>single national register</u> for Security Interests in Personal Property. It replaces around 70 existing national, state and territory laws and registers including the ASIC Register of Charges, and the Register of Encumbered Vehicles (REVs) which will be consolidated onto one Personal Property Securities Register (PPSR).

In addition to replacing existing registers, the PPSA will also require non-traditional securities and other interests in property (i.e<u>. ROT</u>, consignment arrangements) to be registered.

The register will be web based, and will be available online 24 hours a day, 7 days a week.

The new PPSA raises serious risks for many Australian businesses. Owners and Directors should understand that in many instances, existing asset protection and separation structures, such as trusts, may not be sufficient to protect their assets from the reaches of the PPSA.

For example, in a liquidation or insolvency scenario, assets such as stock or assets on consignment which are held by another party will be available to a liquidator unless security over the assets is "perfected" under the new system. *(i.e. In a liquidation scenario, the liquidator may be entitled to sell your assets and apply the proceeds in the liquidation and you will lose your entitlement to the assets or the proceeds from sale)*

If you fail to register, you risk losing any claim to an interest in the collateral.

The registration process is undertaken via completing a Financing Statement online for any security interest. Information will include:

- Secured Party details
- Grantor (or customer) details
- Description of the goods

What do you need to do?

- Review the documents used in your business to determine whether security interests have been granted;
- Draft any required amendments to deal with the PPSA; and
- Seek advice as to how the security interest may be perfected.

To discuss these changes further or for more information, please contact your solicitor or our office.