



The Personal Property Securities Act 2009

An Introduction

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Introduction

- Key rationale is push for harmonisation of laws
- Provides greater certainty for lenders and borrowers
- Allows businesses greater flexibility to raise finance
- Draws on similar reforms in Canada and New Zealand
- Timing – started 30 January 2012

Introduction and Key Concepts

Collateral

Secured Assets/Charged Assets.
Personal property to which a security interest is attached.

Security agreement

An agreement or other act that creates a security interest.

Attachment

Connection between collateral and security interest.

Account

An obligation to pay money

Chattel paper

Existence of monetary obligation and a security interest in a lease of specified tangible property.

New value

The value beyond what's required to pay out an existing encumbrance.

Key Principle

s. 12(1) – “Security Interest”

A security interest means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

Classes of personal property covered:

- Goods including:
 - Motor vehicles
 - Aircraft
 - Watercraft
 - Commingled goods and accessions

Classes of personal property covered:

- Financial property including:
 - Chattles paper
 - Currency
 - Documents of title
 - Investment instruments
 - Negotiable instruments

Classes of personal property covered:

- Intermediated securities:
- Intangible property including:
 - Intellectual property
 - Accounts
 - ADI accounts

Other types of property included:

- Proceeds
- Inventory
- After-acquired property

What property is excluded?

- Common law lien
- Right of set-off
- Interests in land
- Water licences
- Mining tenements
- Fixtures
- Interests under bankruptcy and corporate insolvency laws.

The new register and how it will work

The PPS Register

- Single, national online PPS Register available to be searched anytime.
- “Noticeboard” of security interests – will not hold detailed information of each security interest or arrangement.
 - Details of Grantor / Secured Party
 - Collateral class
 - Term of security
- People with a bona fide interest will be able to request further details of the security interest from the relevant parties
- Anybody is able to make a registration on behalf of a secured party provided they have reasonable grounds to believe secured party is or will be a secured party in relation to the collateral (receive a verification statement upon registration)

Abolition of Fixed and Floating Charges

- PPSA will not distinguish between fixed and floating security interests, and there is no ongoing relevance for related concepts such as crystallisation
- All security interests are essentially fixed (but extinguishment rules may enable a third party transferee to take free of security interest)
- Migration provisions
 - Existing fixed and floating charges will continue to be valid – given transitional priority onto PPS Register
 - Need to re-perfect security and select relevant collateral classes formerly captured as ‘fixed’ and ‘floating’
- PPSA retention of title property

Classes of security

1. Traditional security by form
 - The mortgage
 - The charge
 - The pledge
 - The lien

2. Traditional security by function
 - Hire purchase
 - Finance lease transaction
 - Retention of title arrangements

Classes of security (cont.)

3. Additional classes:

- Security interests under the PPSA
- Deemed security interests
 - The interests of a transferee in an account or chattel paper
 - The interest of a consignor who delivers goods to a consignee under a commercial consignment
 - The interest of a lessor or bailor of goods under a PPS lease

Attachment of Security Interests

- Attachment of security interest to collateral makes it enforceable against the Grantor
 - Value must be given, or the Grantor must do an act that gives rise to the security interest
 - e.g. financier makes a loan, or the grantor signs the security agreement
- Mere *attachment* does not make the security interest enforceable against third parties

Methods of perfection

Perfection of Security Interests

- Security interest is enforceable against third parties if attached and there is perfection by possession, control or registration
 - Perfection by registration on PPS Register is most effective form of perfection
 - Perfection by control and/or possession is only relevant for certain categories of collateral (i.e. finance products)
- May also have temporary perfection (this is relevant for the transitional registration period)

Priority Rules for competing Security Interests

- A perfected security interest has priority over an unperfected security interest in the same collateral
- A perfected security interest (first in time) has priority over another perfected security interest (later in time)
- An unperfected security interest (attached first) has priority over another unperfected security interest (attached later)

Purchase Money Security Interests (PMSIs)

- Security interest in collateral that secures the purchase price for goods provided, or secures the finance enabling the acquisition of the goods
- Particularly relevant to manufacturers/suppliers of goods in relation to retention of title arrangements
- Provides for a “super priority” – a registered PMSI will have priority over most earlier registered (and subsequently registered) non-PMSI security interests

Purchase Money Security Interests (PMSIs) (cont)

- A PMSI gives lenders and credit term suppliers priority over general financiers
- To obtain the benefit of a PMSI, most current terms and conditions will need to be amended to allow a PMSI to be created
- Clauses for ongoing commercial relationships need to allow the registration of interests for later acquired property

Proceeds

Commingling of Goods

- If a PMSI is taken over goods that become an unidentified part of a larger product of mass, the PMSI is protected
- Under Part 3.4 of the PPSA a PMSI in a commingled item is preserved but limited to the value of the component goods on the day on which they became part of the product or mass
- A PMSI continues to have priority over the commingled goods

Acquiring property free of security interests

- Acquisitions in the ordinary course of business
- Personal domestic or household property
- Special rules for motor cars

Enforcement

- Subordination agreements
- Garnishee procedure
- Commercially reasonable