



Personal Property Securities (PPS)

From October 2011 Australia will have a new Federal law for the taking, registration and enforcement of security over all kinds of property except land. This law will impact most businesses and require action to ensure you are compliant. Some examples of the impact of PPS include:

- **Supplier of wine, beer to bars and restaurants**

Wine, beer supplied on credit

Terms of trade include a reservation of title clause.

The supplier's interest must be registered on PPS register in order for reservation of title to work.

- **A company manufacturers motor homes**

The company had on its premises parts to be installed in motor homes:

eg. pipe, pipe connectors, plumbing parts.

Supplier had a reservation of title clause, but it was not registered for PPS.

But bank had a charge, appointed a receiver who took the parts to the exclusion of the supplier.

The supplier should have registered for PPS.

- **Cutting right to standing timber in a forest is personal property**

An interest in the timber should be registered.

- **In New Zealand, to improve internet connections, a rural municipality engaged an Internet Service Provider to build a wireless internet in the municipality**

The municipality financed the ISP's purchase of the hardware and software.

The municipality registered its interest on the PPS register.

The ISP got into financial difficulties. The municipality chose to take possession of the hardware and software, which PPS permits it to do, rather than chase the debt.

Thus, the municipality retains control of the faster internet, in spite of the failure of the ISP.

- **A Dispute**

A Supreme Court dispute was settled on terms, inter alia, that one litigant would "lend" several horses to the other litigant for an indefinite period.

The loan of horses is an interest which can be registered on the PPS register.

The terms of settlement contain terms, which permit the owner of the horses to register her interest, and thus protect her interest, on the PPS register.

Without registration, the litigant who "borrowed" the horses may be able to sell them and the purchaser would have a better right to the horses than the true owner.



- **Consider a courier company**

Several of the assets (a three ton truck and radio licences) used by the courier company are in fact owned by a related company and “lent” to the courier company (on an informal arrangement) and used by the courier company in its day to day business.

If the courier company’s bank takes action under its debenture, post introduction of PPS, then the interest of the related company in the truck and licences will be defeated unless the interest is registered under PPS.

Are you:

- Manufacturer
- Supplier
- Financier
- Retailer
- Wholesaler

Do you:

- Provide goods on credit
- Lend goods or intangibles
- Lease goods
- Finance goods or intangibles
- Undertake inter-company lending or hiring of goods

These are a few areas that will be affected - PPS will impact you.

To discuss how to prepare for PPS, please speak to your Madgwicks relationship lawyer.

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