



Update

Personal Property Securities

15 December 2011

PPSA Commencement - Further Update



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There has been much uncertainty surrounding the timing of the commencement of the *Personal Property Securities Act 2009* (Cth) (**PPSA**). On Monday, 21 November 2011, the Attorney-General made a determination under the PPSA regarding the commencement of the new legislation.

When will it start?

The Attorney-General determined that the "migration time", which relates to the "migration" of personal property security data (such as ASIC charge data) on to the PPS Register, would be 21 November 2011. He also determined that the "registration commencement time" (after which new security interests covered by the PPSA will need to be registered on the new PPS Register) is to be Monday, **30 January 2012**.

However following this, on 29 November 2011, the *Personal Property Securities Amendment (Registration Commencement) Act 2011* (**Act**) received Royal Assent. The Act amends the PPSA to allow the Attorney-General to determine a registration commencement date later than the earlier proposed cut off of 1 February 2012.

Although the Act now makes it possible for the PPSA registration commencement time to be pushed back again, given that the end of the year draws closer and no extension to the 30 January 2012 commencement time has been announced, we think affected businesses need to start taking action as soon as practicable to ensure that they are PPSA ready.

The Australian Government has also made available certain tools to assist businesses for the commencement of the PPSA in the near future. A series of video tutorials is now available on the PPS website which helps guide PPS users through the process of PPS registration.

What does this mean?

Accordingly, we recommend that businesses affected by the PPSA (eg. those involved with leasing, hiring and financing personal property and supplying or purchasing personal property on credit or retention of title arrangements) should begin preparing now (if they haven't already) to be ready to implement necessary changes to their documentation and procedures to deal with the PPSA by 30 January 2012.

Some of the main implications of the new PPSA regime are:

- The system of registration of company charges with ASIC will be abolished and a whole new system created for registering security interests in personal property on the new PPS Register.
- New priority rules will now apply in relation to insolvency and bankruptcy. In some cases, ownership of assets will no longer be decisive in determining priority.
- For example, retention of title clauses in relation to personal property supplied on credit terms will no longer automatically confer priority on the owner of the goods by reason of their ownership. Failure to register an interest appropriately could result in loss of priority – unlike the current law, ownership does not necessarily protect the owner. This will significantly affect many businesses supplying products on credit terms.
- Similarly, leases or bailments of personal property (if they fall within the definition of "PPS Lease") are also affected significantly by the new regime. If a lessee or bailee becomes insolvent, the lessor or bailor will need to register their interest or risk losing priority. Again, unlike the current law, ownership does not necessarily protect the owner. This has major implications for businesses which involve leasing equipment.
- There is a new category of security interest created by the new regime, purchase money security interests (or PMSIs), which will give the holder "super priority" over other kinds of security interests.
- There will be an electronic system for registering security interests under PPSA on the PPS Register which will differ significantly from the process of registering a charge with ASIC. It is possible that an interest can be registered without the knowledge of the entity which is alleged to have granted the interest.

If you need any assistance to prepare for the implementation of the PPS reforms or any further advice regarding the PPSA, please contact Holding Redlich.

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