

PERSONAL PROPERTY SECURITIES ACT 1999

Introduction

The Personal Property Securities Act 1999 (“the Act”) is a comprehensive regime for the registration and enforcement of security interests in personal property. It covers all securities apart from a mortgage over land or an interest in land.

The Act provides for the registration of security interests on the Personal Property Securities Register (“PPSR”). Anyone who wishes to check whether personal property is subject to a security interest can search the PPSR via the internet.

Scope of the Act

The Act applies to all security arrangements over personal property which will include debentures, mortgages of shares, chattels securities, securities over trade marks and intellectual property, hire purchase agreements, securities over motor vehicles and any situation where a person claims an interest in real property.

For example, retention of title clauses or romalpa clauses are specifically included and these security interests will now be registerable under the Act.

If you have retention of title clause or romalpa clause in your dealings with your customers, in order to enforce those rights you must arrange registration. Likewise, if you have sold a business or shares in a private company and taken security back to secure payment of the purchase price, that security must also be registered in order to protect the security against other creditors.

Registration on the PPSR

Registration is affected by registering a financing statement on the PPSR.

Registration of a financing statement is only possible in an electronic form and the financing statement is searchable via the internet on the PPSR.

Only brief details are provided on the PPSR, which include:

- Name and address of debtor.
- Date of birth of debtor if an individual or official registration number if an incorporated body.
- Name and address of secured party.
- Description of the collateral (i.e. personal property, goods etc) affected by the security interest including its serial number.

As a consequence, the terms and conditions of, for example a company debenture, are not be searchable on the PPSR. These details will need to be obtained from the debtor or creditor.

Registration of the security interest will last for a period of five years but may be renewed for further periods of five years as long as renewal is registered within the existing five year period.

Searching the PPSR

The PPSR may only be lawfully searched for the following purposes:

- For information about yourself or about another person, with their consent.
- By you or your creditor for a purpose relating to a security interest to which either is a party.
- Any person who wishes to purchase property may search to ascertain whether the property is subject to a security interest.
- By any person to decide whether to lend money to another person.
- By any person to decide whether to invest with the person to whom the search relates.
- By liquidators, receivers, the official assignee, Court bailiffs, government agencies, and law enforcement creditors for purposes relating to enforcement of their rights.
- By news media for verifying or establishing facts.

Release of security interests

There is a statutory obligation for a creditor to register a release of a security interest where the advance secured by the security interest has been repaid. Where, for example, goods purchased on hire purchase are paid off, a release must be registered.

Enforcement of security interests

The Act uses two fundamental concepts to establish the creation of an enforceable security interest. They are attachment and perfection.

A security interest will attach to the collateral when the lender advances money to the borrower or claims rights in the goods. The security interest should then be perfected by either registering a financing statement or taking possession of goods directly or through an agent.

It does not matter in what order attachment and perfection occur.

Lenders will often register a financing statement before advancing money, so that the security interest becomes perfected as soon as the loan is made available.

Priority of security interests

The Act seeks to set out a code in relation to the priority of security interests. The principal rule is the first secured party to register a security interest in collateral on the PPSR will have first priority in that collateral.

A perfected security interest will prevail over an unperfected security interest.

Priority between unperfected security interests will be determined in the order of attachment.

Special priority is given to a purchase money security interest ("PMSI"). This is a security interest taken in personal property to the extent it secures the purchase price of that

property. Under the Act the holder of a PMSI has a period of ten working days from the delivery of the goods to the borrower to register or perfect the security interest.

In practical terms, this means that a lender advancing money for the purchase of goods in perfecting their PMSI will take priority over a security interest given by the person over all their existing and after acquired property.

Examples

The Act sets out a number of examples dealing with:

- In the case of retention of title provisions, the Act now codifies the law and will protect a security interest of a lender who advances money to purchase goods that are subsequently processed or co-mingled with other goods and also permits attachment to the proceeds of sale.
- Purchasers of motor vehicles from a licensed motor vehicle dealer will have a guarantee of clear title.
- A purchaser of goods will purchase free of any un-perfected security interest.
- A purchaser of goods in the ordinary course of business takes the goods free of a security interest.
- The bona fide purchase of consumer goods have a value of less than \$2,000 will also take free of any security interest in those goods. This will mean that it would be possible for the purchaser of goods on hire purchase under \$2,000 in value will be able to defeat the security interest of the financier.
- The Act will also provide that certain goods, such as motor vehicles and airplanes, must be described by reference to serial number and it should be noted that failure to describe those goods with a serial number or incorrectly describing the goods will have the effect of invalidating the security.

Conclusion

Gellert Ivanson can assist with the preparation, registration and enforcement of security interests. In particular we can assist with:

- The preparation of terms of trade granting a purchase money security interest in goods supplied by you.
- The preparation of general security agreements which take a security interest over all present and after acquired personal property of the borrower.
- The registration of all types of security interest on the PPSR.
- The enforcement of security interests and repossessing collateral.

If you have any questions arising from this paper, please do not hesitate to contact us.