



## PERSONAL PROPERTY SECURITIES ACT – HAVE YOU PREPARED FOR IT?

The new legislation known as the **Personal Property Securities Act 2009 (PPSA)** comes into play on the 1<sup>st</sup> of February 2012. This will be replacing over 70 existing national, state and territory laws regarding ownership of goods.

This new law that comes into effect on Wednesday the 1<sup>st</sup> February 2012 will bring with it dramatic changes to the way security is taken over personal property and the impact it will have on businesses that:

- Sell goods on credit and currently rely on the Retention of Title Clause (this will not be adequate come 1/2/2012)
- Goods provided under a commercial consignment arrangement – e.g. computing equipment, books, jewellery, watches etc., on consignment to retailers) will need to register their interests in assets held by the retailer.
- Rely on the Payment Retention Clause under a construction contract
- An Agents rights under an Agency Agreement to retain property until the agent has been paid their fees and expenses.
- Provides a security deposit under a Supply Agreement

The new PPSA Act has established rules that will create valid and enforceable security interests, priorities between competing interests, when a security is enforceable in insolvency and when Personal Property is acquired free of a security interest.

Not understanding the new system or failing to follow the provisions of the new Act, may put you at risk of losing your claim to assets you currently consider your own. Title is not relevant under the Act. What you need to do to make sure such risk is minimised:

### **ACTION:**

- Review your terms of supply, as well as financing arrangements and other affected contracts
- Identify assets affected and transactions that need to be registered
- Redraft standard terms
- Recommend new policies and processes concerning the requirements for registering transactions and associated documentation; and
- Check that any security interest registered against them or their business does not exceed expectations
- Make sure you register your interest

Currently 20 registers will automatically migrate to the **new Personal Property Security Register (PPSR)**, including ASIC Register of Charges and the Register of Encumbered Vehicles (REVS). But there are over 60 registers which will not automatically migrate to the PPSR, as well as personal property that no one has currently registered.

With this in mind be very diligent when reviewing the register and supplying goods to your customers. There will be a transition period of two years from commencement to migrate/register security interests to the PPSR and all new security interest will need to be registered immediately.

### **Still confused?**

An example of how the new Act will work in the real world.

You (Supplier A) sells beauty products to a company – Beauty R Us Pty Limited (customer). Under the new legislation, in order to have a valid priority security interest in the stock sold (i.e. previously you would have had a clause in your terms such as “title of goods remain property of Supplier A until account paid in full” you must:

- Have an agreement with Beauty R Us Pty Ltd which grants rights of Retention of Title until the goods are paid for
- Ensure the agreement is in writing and is signed by a person with appropriate authority
- Register your interest in the stock on the PPSR via a financing statement; and
- Ensure that the written agreement is entered into and registration occurs prior to supply of the stock to Beauty R Us Pty Ltd

If these steps are not taken and a liquidator/administrator/receiver is appointed to Beauty R Us Pty Ltd, you risk losing any claim to the stock or the proceeds from the sale of the stock. The concept of the “course of dealing argument” (this is where no written agreement is in place but the parties have traded under implied terms for a period of time) will no longer be sufficient to protect your interest to recover monies owed to you under PPSA

**The PPSR goes live on Monday the 30th January 2012 and the onus is on the secured party to review and inspect their security interest and remedy any defects as soon as they are identified.**

**To help you understand what PPSA means for your business AKA Group Accountants can assist with this so please contact our office to discuss further on +61 2 9697-9155 or email us at [success@akagroup.com.au](mailto:success@akagroup.com.au)**

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