



Perfect or Perish Priority-Wise - PPSA Temporary Protection Period Expires Soon

When the *Personal Property Security Act 2009* (Cth.) ("**PPSA**") came into force on 30 January 2012 pre-existing 'securities interests' over personal property (i.e. excluding land, fixtures and specified statutory interests) which were defined to be a 'transitional security interest' were deemed to be temporarily protected for the period to 31 January 2014 pursuant to the PPSA. The benefit of such temporary protection applied notwithstanding that the 'transitional security interest' was not registered upon the PPS Register.

A 'transitional security interest' is in substance an interest in personal property which secured monetary payment or the performance of an obligation which existed prior to 30 January 2012. A 'transitional security interest' also includes a security interest that did not exist as at 30 January 2012, but was created pursuant to a 'security agreement' that existed prior to 30 January 2012, which continued to be in existence after that time.

The prime example of a 'transitional security interest' is the interest created as a consequence of the supply of goods from a supplying entity to an entity seeking to purchase the goods following 30 January 2012, whereby, the supply arrangement includes a retention of title clause in an agreement that was in existence prior to 30 January 2012.

Other 'security interests' such as finance leases of goods, pledges, factoring arrangements and consignment arrangements, which were created pursuant to a 'security agreement' that existed prior to 30 January 2012, may also constitute a 'transitional security interest'.

In order to have the continued benefits conferred by the PPSA regime in relation to a 'transitional security interest' the subject security interest is required to be registered upon the PPS Register prior to midnight on 31 January 2014 (Canberra time).

Failure to register by this deadline may result in the entity that has the benefit of the 'transitional security interest', losing its priority to the collateral, to another secured party holding a particular security interest in the same collateral.

Eakin McCaffery Cox, Lawyers can assist in determining whether any rights and entitlements under arrangements pre-dating 30 January 2012 are "transitional security interests" requiring registration in order to perfect the subject security interest and maintain its particular value to you and, if instructed, attend to its registration upon the PPS Register.

Feel free to contact Peter Aked, Partner Ph: (02) 9265-3078 or Kerry Sidaway, Special Counsel Ph: (02) 9265-3030 or your usual Eakin McCaffery Cox, Lawyers contact if you have any queries or require any assistance concerning any particular aspect of the PPSA regime.

This document is only a summary and should not be construed as legal advice. The application of the PPSA regime to a particular entity is subject to a definitive legal review and assessment.

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