



Personal Property Security Register:

deal or dud?

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As retail demand continues to decline because of worrying signs on the economic horizon and a growing sense in businesses and consumers that they are too greatly in debt, you would have to think that any initiative by the Federal government to streamline the way business and individuals provide security for credit would be a welcome one for the boost it could deliver to trading relationships.

The truth is, however, as with a great deal of the current government's initiatives, the new Personal Property Security Register ("PPSR"), which was supposed to be open for business this October but is likely to be delayed to no later than February next year, is not well publicised and its benefits, or otherwise, remain largely unknown.

The new register is part of a set of new reforms that will remove limitations on the use of personal property as security for loans, increasing the ability of business to raise capital.

Right now, data from other security registers around the country is being transferred to the PPSR, as these registers will be replaced by the PPSR. Security interests in cars, for example, which are currently held on state-based registers

known as REVS in NSW (Register of Encumbered Vehicles) and VTEC in Victoria, will be migrated to the new site.

The PPSR will hold details about security interests in personal property that can include cars, boats, machinery and equipment, crops, investment instruments including shares, intellectual property and contract rights to name but a few. Personal property can also include property that will be owned in the future. It does not include, and this is an important distinction, real property (land) and any fixtures or dwellings on that land.

In the past, of course, a security interest was always capable of being granted whenever a person or a business has taken an interest in some personal property as security for a loan or as credit for some goods received. However, it was not always capable of being registered. The new PPSR makes the whole operation more readily transparent by allowing creditors to view the number of security interests granted in a particular piece of personal property, as well as making it easier for creditors to seize goods when a creditor defaults.

The most important thing business should do, as the deadline for the new register gets closer, is to update their terms and conditions on contracts related to credit and ensure that their customers are aware of the new terms and conditions. The new laws will affect all lenders and trade creditors in any type of business relationship.

By way of an example, if a business known as, let's say, Joe's liquor, approaches Good Spirits Pty Ltd for a trade credit account

with a limit of \$40,000, Joe's liquor will be required to provide security for the value of that account. And so a security interest may then be established in some of Joe's liquor's personal property, which might be a car or boat or items of art as well as the stock supplied by Good Spirits. Joe's liquor would also need to establish a security interest in supplies of goods to Pete's Dine and Dance for the regular weekly supply to the value of \$5000 (if such supply is on credit), and so security interests are established along the downstream flow of goods from wholesale to retail outlets.

The same is true of other credit relationships such as chattel mortgages, conditional sales agreements, hire purchase agreements and consignments where a security interest is created automatically. These examples have always had a security interest but they were never required to be registered to be enforceable.

The register will be online and the delay of getting it up and running is because of issues related to testing of the online interface. It will have two levels of access. For businesses and consumers, who might use the register on a casual basis and who can pay for and perform a search without having to set up an account. A business or consumer might use the register to check if there is a security interest over an item of property that they are thinking of buying or that they have been granted a security interests in. Frequent users (anticipated to be businesses), on the other hand, can register and nominate people within an organisation for access to the register. Use of the register will incorporate protections related to privacy and searches against the names of businesses or individuals will only be allowed for purposes that are authorised. Presumably, heavy penalties will apply for misuse of private information contained on the register and claims for damages may be brought by those who have suffered loss or damage as a result of any breaches.

When security interests are listed on the registry, financial statements will have to be submitted to ensure that the registration is valid. A party wanting to register a security interest must believe on reasonable grounds that it holds a security interests, ie a party cannot register a security interest merely because they are owed money. The registration can last for 25 years. Most importantly, when registering items for security it is essential that they are properly described.

This means including details of key attributes of the property including registered trademarks and serial numbers. Details that are incorrect or missing may leave the registration ineffective. There are also penalty provisions for registrations that are made without foundation.

The register is a reform brought about by the Council of Australian Governments though the idea has been up and running in other countries around the world. Just how effective it will be in streamlining the credit relationships between businesses remains to be seen and there is a transition phase for 24 months to allow businesses and individuals to register interest that are unable to be registered on any existing register.

The new laws replace over 70 pieces of legislation at various state and federal levels so they are certainly a substantial change.

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