



Debt Recovery Update

September 2009

>>Legislative changes for personal property securities

Are you a creditor?

Do have a retention of title clause in your terms and conditions?

Have you thought of taking security over personal property from your debtors?

If you answered YES, then the introduction of the Personal Property Securities Bill 2008 ("PPS Bill") will affect you. This newsletter provides an overview of the major changes proposed as a result of this legislative reform and some of the key issues you should be aware of.

For more information on protecting your securities, do not hesitate to contact one of our solicitors in the C&G Collect team, our specialist debt recovery group.

>>Taking it Personally: Personal Property Securities Reform

The Personal Property Securities Bill 2008 (the PPS Bill), when it becomes law, is designed to provide a more consistent approach to personal property security for both businesses and consumers.

At present there are more than 70 Acts of Parliament throughout Australia that deal with how personal property can be used as security and 40 separate registers across the country that record personal property securities (for example, the automotive register, REVS). The reforms proposed in the new Bill – which should be implemented by May 2011 – will streamline this system considerably.

The Personal Property Securities Bill 2008 ('PPS Bill') proposes:

- A national system which will involve a single Commonwealth Act to set rules for security in personal property and their priorities.
- A single national online register (the Personal Properties Securities Register - "PPSR") to record security in personal property. It will be computer based and will offer 24 hour public access.

"Personal Property" is defined in the PPS Bill as property (including a licence) that is not land.

It includes both tangible property such as motor vehicles, machinery, crops etc as well as intangible property such as rights under a contract.

>>What will the PPS Bill apply to?

The new PPS Bill will apply to all security interests over personal property.

To determine whether you have security interest that is eligible for registration under the new system, the questions to ask are:

- Have you supplied credit or finance to a debtor?
- Have you created a security interest over that debtor's personal property to secure repayment or performance?

Under the Bill a security interest can also be created by the:

- transfer of an account
- lease of personal property for a term of more than a year
- a commercial consignment or retention of title arrangement

>>Priorities

One compelling reason for registering your security over personal property, is to ensure that in the event of your debtor's insolvency, your interest in the property is recognised and you can recover the property or funds.

The new Bill sets out rules for the priority of security interests in the same personal property, and will also cover priorities in relation to co-mingled personal property e.g. where goods become part of another.

The concept of "Perfection" will also be very important under the new Bill and refers to the ways in which you can ensure that your security interest has priority over others in the same property. This can be achieved through registration on the PPSR or by taking possession of the property. For more information on this area contact our debt recovery expert, Rebecca Hegarty, in the C&G Collect Team.

>>Retention of Title Arrangements

These arrangements can also fall under the terms of the Bill. A creditor can gain some extra priority over the property by way of a Purchase Money Security Interest (PMSI).

- PMSI is where a creditor, for example, has provided money for the debtor to buy the personal property and this property is used to secure repayment. A PMSI can be created based on this arrangement and will generally have a higher priority than most other interests in the same property.
- It is very important to record this arrangement in writing and prudent to register the security interest. This will make your position as a creditor even stronger in the event of your debtor's insolvency.

Should you require any further information about your own firm's credit situation, personal property security, or registering a security please do not hesitate to contact:

Rebecca Hegarty, Solicitor
Phone: 9895 9289
Email: rhegarty@colgreig.com.au