

PPSA and Guarantees

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1. What is this guide about?

- 1.1 This guide reviews whether a guarantee is governed by the Personal Property Securities Act 2009 (Cth) or 'PPSA' and what the parties must therefore do as a result.
- 1.2 Specifically this guides reviews whether the PPSA governs the obligations of a company when it, for example, borrows money from a bank or enters an important contract with a large client, which is supported or guaranteed by individuals associated with the company, generally directors of the company.
- 1.3 Before the PPSA, this was a simple procedure - there was no registration of guarantees.
- 1.4 With the PPSA, if the guarantee includes a provision specifically charging some or all of the guarantor's personal property or assets with repayment of amounts owed by, or performance of obligations by, the company, the guarantee is a security interest under the PPSA.
- 1.5 To maximise protection for persons relying on guarantees, this security interest should now be registered on the Personal Property Securities Register or 'PPSR'.
- 1.6 Of course, if the guarantee does NOT charge any personal property it does not fall within the PPSA and therefore does not need to be registered.
- 1.7 Businesses relying on guarantees should ensure their guarantees specifically charge the guarantor's personal property and that the resulting security interest is registered.
- 1.8 Townsends can provide a guarantee which specifically charges the guarantor's personal property and thus ensures the guarantee is a security interest under the PPSA.

2. What do you register on PPSR?

- 2.1 Once a guarantor has signed a guarantee containing a provision specifically charging the guarantor's personal property, then the business getting the benefit of the guarantee has a security interest under PPSA.
- 2.2 After commencement of PPSA (30 January 2012), this security interest should be registered on PPSR.

3. What is 'personal property'?

- 3.1 Personal property is effectively all property other than interests in land, and includes goods, plant and equipment, shares, intellectual property such as trademarks and copyright, negotiable instruments, debts, as well as many other kinds of property.
- 3.2 Some types of security interests in personal property are not covered by the PPSA; eg liens.

4. How and when do you register on the PPSR?

- 4.1 You register on the PPSR by properly completing a financing statement and lodging it with the PPSR.
- 4.2 You should register on the PPSR as soon as possible after the guarantor has signed the guarantee, in order to get maximum protection for the guarantee as security. As the secured party, you may even be able to register a financing statement in relation to a guarantee before the guarantee has been finalised, though we believe that registration should not occur before the guarantor has signed the guarantee.

5. How much does it cost to register on the PPSR?

- 5.1 It costs \$7.40 to register online a financing statement on PPSR for seven years and \$130.00 to register online a financing statement with no end date.

6. What happens if you have registered on the PPSR?

- 6.1 If you have registered on the PPSR, then your interest in the personal property specifically charged by the guarantor, will be protected by having an order of priority, in accordance with PPSA.
- 6.2 This does not always mean that your security interest has the highest priority, but you will have done your best to secure your interests in that personal property.

7. What happens if you don't register on the PPSR?

- 7.1 If you have NOT registered your security interest in the guarantee on the PPSR, then your interests will rank behind all other registered security interests in the personal property.
- 7.2 In addition, your security interest will not be enforceable against third parties.

8. How do you enforce your security interest?

- 8.1 You can enforce your security interest by seizing the specific goods which secure the guarantee, from any party who has the goods and has a lower priority than you.
- 8.2 Once you have obtained possession of the goods, you can either keep them or dispose of them under a power of sale.
- 8.3 The enforcement provisions in the PPSA do not replace, but rather complement, other rights and remedies available to you. These additional rights may be contained in statute law, common law or equity.
- 8.4 The enforcement provisions do NOT apply where a receiver or receiver/manager has been appointed to deal with property under Part 5.2 of the Corporations Act (Cth).

- 8.5 In practice, in guarantee situations, it may be difficult to seize the relevant goods. It may be more appropriate to make a written demand on the guarantor.
- 8.6 You may be liable if you take action against the secured property when you have no legal right to do so. Accordingly, you should always seek and rely on specific legal advice before you take any enforcement action.

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