TOWNSENDS BUSINESS & CORPORATE LAWYERS

PPSA and Lending Money to a Company

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1. What is this guide about?

1.1 This guide reviews whether a finance transaction where the borrower is a company will be captured by the Personal Property Securities Act 2009 (Cth) or 'PPSA' if the transaction involves a security interest over personal property, and what the parties must therefore do as a result.

1.2 In this case, a lender provides a company with funds to increase operating capital or for other general business purposes. To protect its loans, the lender takes security over all of the company's non-real estate property to secure repayment.

1.3 In some circumstances where money is borrowed by a company, a director's guarantee may be required. For further information, please refer to our information guide "PPSA and Guarantees".

2. What is 'personal property'?

2.1 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.

2.2 Some types of security interests in personal property are not covered by the PPSA; for example liens.

3. What do you register on PPSR?

3.1 To ensure maximum protection, the lender should have a signed security agreement with the company and register its interest in the company's non-real estate property under that security agreement on the Personal Property Securities Register (PPSR) established under the PPSA. A security agreement is similar to a charge (eg a fixed and floating charge).

3.2 Townsends can provide a security agreement which complies with PPSA requirements.

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

4.1 The lender registers its security interest on the PPSR by properly completing a financing statement and lodging it with the PPSR.

4.2 The lender's interest should be registered on the PPSR as soon as the borrowed funds are made available. This is because the time of registration of the security interest on the PPSR determines its priority against other security interests.

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 while it costs \$130.00 to register online a financing statement with no end date.

6. What happens if you register on the PPSR within the required time?

6.1 If you register on the PPSR then your interest in the property specifically charged under the security agreement will be protected by having an order of priority set out in the 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 the secured goods.

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

7.1 If you have NOT registered your security interest in the secured goods under the security agreement on PPSR, then your interests will rank behind all other registered security interests over the company's 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 property covered by the security agreement from any party who has that property and has a lower priority than you.

8.2 Once you have obtained possession of the personal property, you can either keep it or dispose of it 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 come from statutes, 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 some situations, it may be difficult to seize the relevant property. It may be more appropriate to make a written demand on the borrowing company. You may for example be able to apply to have the company wound up for effective insolvency.

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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