

**Cecelia Irvine-So**

Principal
Commercial
LIV Accredited Specialist -
Business Law

Cecelia's area of practice includes commercial agreements, contracts, sale and purchase of business and business succession, including insurance funded buy/sell agreements.

October deadline looms for building contractors, vendors and hirers of goods

The *Personal Properties Securities Act 2009* is about to change the way we do business.

The change to Personal Property Securities

The Act changes the landscape for people who sell goods on a retention of title basis (including building contractors) or who lease out goods.

Following the implementation of the new online PPS Register (currently tipped to be 31 October 2011), if you:

- deliver goods to site on credit;
- deliver goods to your client or their carrier on credit; or
- lease out goods for an undefined period or more than a year on credit,

you will need to register your security interest in the goods on the new PPS Register.

If you don't, then you risk losing title to your goods on the insolvency of the purchaser/hirer.

Two Year Transitional Arrangements

Some of our clients have taken comfort from the fact that the Act provides for a 24 month transitional period which will commence on the go-live date. This seems to give us all 24 months to get organised and arrange for registration of security interests.

But the transitional arrangements could be problematic for you.

Some issues include:

- the obvious risk that people may simply forget that the two year period will expire and their security interest will lose its status at the end of the two years;
- because only a handful of existing state and Commonwealth registers are being transferred to the PPS Register, a search of the PPS Register will **not** bring up all security interests, unless they are also registered during the transitional period;

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Alex McKellar
Principal
Property & Construction

Alex's expertise in advice and litigation encompasses security of payment regimes in all Australian states (excluding South Australia, where no security of payment regime exists) and includes adjudication application, conduct of arbitration, suspension of works, recovery of payment from principal and enforcement of adjudication decisions.

- uncertainty surrounding security interests which may only partly relate to existing registers which are being transferred to the new PPS Register (e.g. a whole business is secured, but only the Vehicles Security Register entry is transferred to the PPS Register during transition);
- the strict registration information requirements of the PPS Register are not matched by the detail from registers which are being transferred and this may affect validity; and
- the possibility that "transferring" state and Commonwealth registers might have the capacity to accept registrations after all of the data is transferred to the PPS Register. What is the status of these registrations?

Recommendations

Your safest course is to seek to get affairs in order by 31 October 2011. The main things to check are:

- your current documentation and especially that which relates to hiring out or the sale of goods on retention of title;
- your records relating to existing security interests (including retention of title and hire-out arrangements) whether or not these are registered at present.

We are currently helping clients, and we can help you:

- review, and if necessary, redraft terms and conditions; and
- train staff to understand what needs to be done after the go-live date in relation to the registration of security interests.

Cecelia Irvine-So and Alex McKellar

The Moores Legal Commercial team

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our team.

Moores Legal is a law firm servicing companies and businesses, Not for Profit organisations and individuals across Melbourne in the areas of Commercial Law, Workplace Relations, Property Law, Not for Profit Law, Aged Care, Elder Law, Estate Planning, Superannuation & Structuring, Dispute Resolution, Family Law and Personal Injury Law.

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