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THE NEW PERSONAL PROPERTY SECURITIES LAW

What's in it for me and my business?

The *Personal Property Securities Act 2009* is expected to come into force in May 2011. When it does start to operate, it will have a significant impact on a broad range of commercial transactions that involve personal property. Personal property is most property other than land.

This is one of the most significant pieces of legislation passed by the Federal Parliament in recent years. There remains little time for businesses to consider whether:

- any of their transactions should be registered on the new *Personal Property Securities Register* ("PPSR");
- their current trade agreements need amendment;
- new business procedures need to be introduced; and
- staff should be re-trained in readiness for the commencement of the new law.

Moreover, financiers may contact you with a view to re-working your security arrangements.

Moores Legal is ready to provide advice and other legal services for businesses to ensure that registrable transactions are registered so as to obtain the protections afforded by the new law.

The new legislation not only covers transactions traditionally regarded as commercial finance transactions (eg a fixed and floating charge in support of a corporate borrowing), but also a range of other transactions that involve the granting of a form of security. Transactions covered include:

- retention of title arrangements on the sale of goods;
- hire purchase agreements;
- long term leases of personal property;
- aspects of franchising and joint venture agreements; and
- licensing of intellectual property (patents, trade marks, etc).

The legislation is complex and may affect commercial arrangements already in place. Failure to register a security interest may see it lose its priority as a security as against other security holders with a registered security interest over the same property. In the worst kind of case, it may be ineffective against other parties leaving your business without the benefit of any security at all.

Here are **some examples** of how the new law will work:

- A manufacturer sells goods on a "retention of title" basis to a retailer. Before the manufacturer registers its security interest, the retailer goes into liquidation. By not registering on the PPSR, the manufacturer has lost its security and will have to take its chances as an unsecured creditor.
- A vendor sells its business assets to a purchaser with 50% of the purchase price payable after completion. Prior to payment of the balance the purchaser, quite legally, on-sells the business

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assets to a third party who will take the business assets free from the vendor's security interest. Failure to register means the vendor loses its priority over other creditors.

- A company provides secure storage bins to a customer as part of a secure wastepaper destruction service. If the customer goes into liquidation the company's own bins can be seized by the liquidator. The company will have lost its "title" to the bins and must prove as an unsecured creditor.

Security holders need to exercise care in deciding to register a security interest. Registration of a security interest that is not entitled to be registered may give rise to a claim that the security holder has made a false or misleading representation concerning the existence of a right or remedy. This would be a breach of the Trade Practices Act, which incidentally will be renamed the Competition and Consumer Act from 1 January 2011.

It is important to note that the new law covers not only corporations but also individuals and extends to what would normally be regarded as "consumer goods".

If you would like Moores Legal to assist you in assessing the impact of the new law on your business and the steps that you might need to take to protect your interests, please contact:

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For more information about whether your documents or transactions may be covered under the new law, [CLICK HERE](#) to access our Business Impact Quick Check

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