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PERSONAL PROPERTY SECURITIES ACT

Selling Goods On Credit?

Money owing to you secured over cars or chattels?

This Act will affect you.

The Act creates an Internet Registry. Registration gives priority over other creditors in respect of money owing to you by your customers for goods supplied or monies lent on security of cars, chattels and other personal property.

Warning:

Retention of title (Romalpa) clauses in your Terms of Trade will not give you priority against receivers and liquidators of your customers without registration under the Act.

MAIN POINTS

- Security interests over personal property will require a financing statement to be registered under the Personal Property Securities Act Internet Registry to gain priority.
- "Security interests" are interests in personal property that secure payment of money or performance of an obligation. It makes no difference who owns the property.
- Security interests include chattel mortgages, charges, finance leases (any term), other leases (for more than 1 year), title retention arrangements (Romalpa clauses) in Terms of Trade or conditions of sale.
- "Financing statement" is a form setting out details of the customer and the personal property.
- Registration gives you priority over unsecured creditors and all secured creditors of your customer who may have registered after you. There are some exceptions one important exception are PMSI's.
- Purchase money security interest" (PMSI) affords first priority status to the sale of goods or loans given to purchase personal property provided a financing statement is registered before possession is given to the customer.
- Different categories of goods and personal property have different rules. e.g. inventory (stock in trade). The priority lasts until stock is resold by your customer.

Who Does It Affect?

- Businesses that sell goods on credit.

Retention of title (Romalpa) clauses in conditions of sale is not enough. Registration of a financing statement will be required and you should review your conditions of sale to ensure it creates a security interest.

- ❑ Lenders on the security of personal property e.g. loans to companies.

What kinds of property does it apply to?

It applies to money owing in respect of all personal property. The definitions of personal property in the Act is complex. In simple terms personal property includes goods and also includes chattels such as cars and furniture, computers and other machinery. It also includes investment securities and debtors (that is people who owe you money), bank accounts and hire purchase agreements.

Personal property does not include land and buildings that are fixtures. *[The law about "fixtures" is technical. Some buildings are not fixtures.]*

The Act also applies to goods you may sell to your regular customers in the future. You only need to register a financing statement in relation to a customer once. You then have priority over receivers and liquidators of your customer in respect of all future goods you supply to that customer. But, you must register to have priority

How do I register?

The PPSA has an on-line register.

A financing statement is registered. This gives details of the debtor (customer) and a brief description of the type of goods and whether it applies to future supplied goods to that debtor.

Your security document or terms of trade (application for credit) are not registered.

What information is needed to register?

- ❑ The **full** name of your customer. (This is important – if you do not have the full name your registration may not be effective.)
- ❑ The date of birth of your customer (if a person).
- ❑ The registration number of your customer (if a company) – we can find this for you.
- ❑ A brief description of the goods e.g. auto-parts.

What if a bank registers before me in respect of all of the personal property of my customer?

For the sale of goods to your customers you have a limited time to register and still have priority over receivers and liquidators appointed by the bank if your customer folds. The same applies to loans to your customers for the purpose of purchasing goods.

Do I need to do anything right now?

- Yes! - Make sure you have the full names of your credit customers.
- Obtain the date of birth or registered number of your credit customers.
 - Review your terms of trade (application for credit) forms.
 - Register financing statements

Send us a copy of your Terms of Trade for advice – See article on sale of goods on credit in this section.