

Register your interest under the Personal Property Securities Act 2009

In a Nutshell

Parties who loan or lease plant or equipment need to be aware of when to register a security interest under the Personal Property Securities Act 2009 (“PPSA”) to avoid unhappy scenarios such as that discussed below, where the owner of plant and equipment was ordered to hand vehicles over to a finance company that had loaned money to the tenant.

Personal Property

The PPSA applies to personal property which includes tangible things like:

- Plant and equipment, such as tools or vehicles, leased or bailed in the course of business; and
- Temporary works such as scaffolding,

and intangible things like:

- Retention monies; and
- Contractual rights, such as ‘take out’ rights, or ‘step in’ rights.

How Do I Protect My Interests?

The PPSA provides a system whereby security interests can be registered on the Personal Property Security Register (“PPSR”).

While registering on the PPSR is relatively inexpensive, and can be done online, the PPSR could not be described as a user-friendly interface. Care needs to be taken to ensure that registrations are performed correctly to avoid an invalid registration.

A sample Registration Search Certificate is reproduced on the following page.

26/08/2014

Registration Number Search Certificate

This is a registration number search certificate for a grantor search

This Search certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 1234567891234567
Search number: 123456789123

This search certificate reflects the data contained in the PPS Register at 26/08/2014 11:32:55 (Canberra Time).

Your search has found multiple registrations. Each registration is identified by a unique PPSR Registration Number. This certificate provides the details of one of the registrations.

Search Criteria Details

Grantor type: Organisation
ACN: 123123124
ACME Coyote Products Pty Ltd (Verified by ASIC Register)

Registration state: Current
Collateral class: All collateral classes
PMSI: Registrations that are either a PMSI or not a PMSI
Transitional: Not Transitional
Transitional - non migrated
Transitional - migrated

Registration Kind: All registration kinds
Sort registrations by number: Ascending

Registration Details

Registration number: 123456789123456 Change number: 1234567
Registration kind: Security interest
Giving of notice identifier: 123456
Registration start time: 30/01/2012 00:00:00 (Canberra Time)
Registration end time: 17/12/2018 23:59:59 (Canberra Time)
Registration last changed: 30/01/2012 00:00:00 (Canberra Time)
Subordinate registration: Not stated Transitional: Yes
Registration State: Current

Grantor Details

Organisation identifier: 123123124 Organisation identifier type: ACN
Organisation name: ACME Coyote Products Pty Ltd (Verified)

Collateral Details

Collateral type: Commercial property
Collateral class: Other goods

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This search certificate reflects the data contained in the PPS Register at 26/08/2014 11:32:55 (Canberra Time).

Description: All goods supplied by the secured party to the grantor including but not limited to scaffolding products and related goods
Proceeds: Yes - All present and after acquired property.
Inventory: Yes
Subject to Control: No
Purchase Money Security Interest: Yes

Secured Party Details

Organisation identifier: 444 555 666 Organisation identifier type: ACN
Organisation name: Roadrunner Coyote Escape Enterprises PTY LTD (Verified)

Address for Service

Contact name: Roadrunner Accounts Receivable
Email: acct_receivable@rcee.com
Fax: 02 9999 8888
Mailing address: Locked Bag XX
SYDNEY NSW 2000 AUSTRALIA
Physical address: Roadrunner Building
George Street Sydney NSW 2000 AUSTRALIA

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End of search certificate

EMAIL: enquiries@ppsr.gov.au WEBSITE: www.ppsr.gov.au

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Maiden Civil Case

The PPSA regime has introduced a conceptual shift where ownership of title has been replaced with the PPSA regime for matters involving security interests as demonstrated in the *Maiden Civil* case.

In the *Maiden Civil* case, Queensland Excavation Services ("QES") lost Caterpillar plant (two excavators and a wheel loader) by failing to take adequate protection under the PPSA.

Briefly, the key facts were that QES leased the Caterpillar plant to Maiden Civil, and Maiden Civil, in turn, obtained finance from Fast Financial Solutions ("Fast") using that Caterpillar plant as security.

The lease of the Caterpillar plant was classified as a 'PPS Lease' under the PPSA which meant that Maiden Civil was permitted by the PPSA to use the Caterpillar plant as security for the loan from Fast.

When Maiden Civil defaulted on the loan Fast appointed receivers and was able to obtain orders from the Court that the Caterpillar plant be returned to the receivers.

QES failed to adequately protect its interest in the Caterpillar plant by registering its interest on the Person Property Security Register. Fast had registered its interest on the register and so even though the Court recognised that QES owned the Caterpillar plant and was not involved in the loan of moneys from Fast, QES lost that Caterpillar plant to the finance company that had registered its interest.

Next Steps?

Parties should review their business operations to ensure that their interests are properly protected under the PPSA. Given the complexities with this regime legal and professional advice may need to be sought. Care needs to be taken when registering security interests to ensure that the registration is valid.

**Prepared by Bannermans Lawyers
26 August 2014**