

Personal Property Securities Act (PPSA)

An Overview

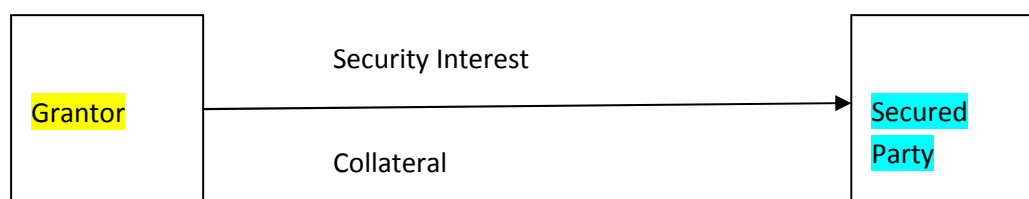
From 30th January 2012 there is one national personal property security (PPS) law and one national PPS register (PPSR) bringing the different Commonwealth, State and Territory laws and registers under one national system.

In regards to the policy objective of PPSA appears to be to attack the evil of apparent wealth”- that under the current system an entity may seem to own assets that in fact are owned or claimable by others. The technique used by the PPSA to achieve this is to deem, in effect , that the rights of the owner are a form of security interest.

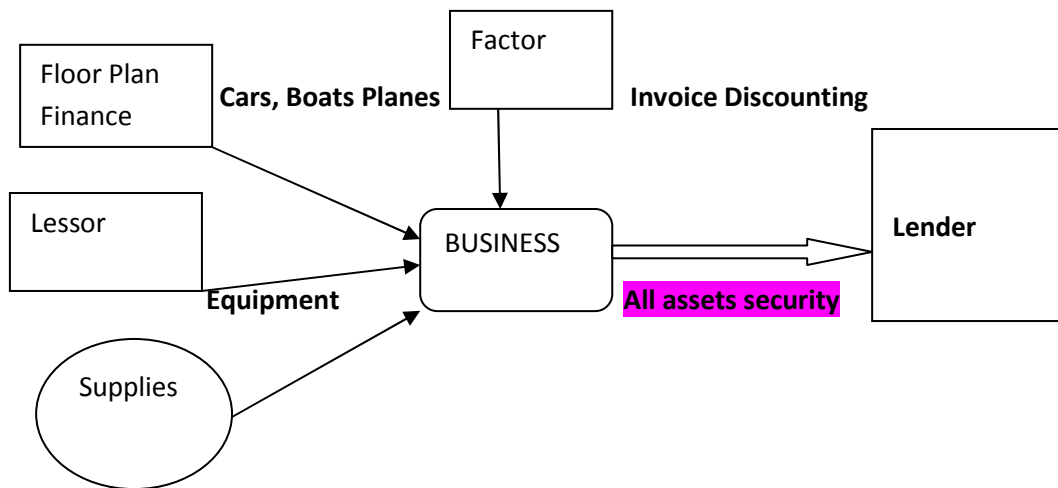
New Vocabulary

1. Collateral – personal property subject to a security interest
2. Grantor – a company, individual or other entity that grants a security interest over personal property to another party. Grantors include those who:
 - Use their business assets as a security for a loan, for example a fixed and floating charge or factoring agreement,
 - Receive property under a retention of title arrangement or on consignment
 - Lease or receive on bailment personal property from another party for a extended period
3. Secured Party - a company, individual or other entity that has a security interest in collateral

NEW LEXICON



THE EVIL OF APPARENT WEALTH



Stock on retention of title or consignment "ROT"

Note

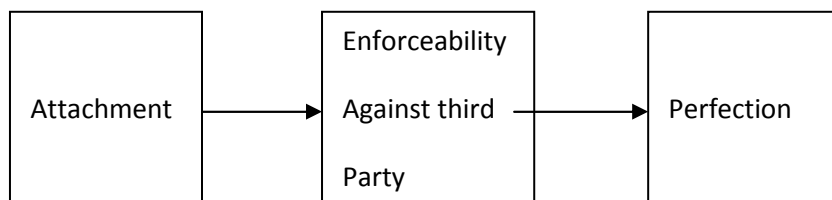
PPSA doesn't cover

Land or interest in land including fixtures

Water rights

Other things prescribed

PPSA'S THREE STAGE PROCESS



PERFECT OR PERISH FOLLOW THE STEPS OR PERISH

Attachment

Attachment refers to the time when the collateral becomes subject to the security interest and is a prerequisite for a security interest being enforceable against a grantor. It assumes the existence of a valid security agreement between the grantor and the secured party.

Enforceability of security interest against third parties

A security interest is enforceable against a third party in respect of collateral only if:

- The security interest is attached to the collateral; and
- One of the following applies, the secured party possesses the collateral or the secured party has perfected the security interest by control or there is a security agreement evidenced in writing

Perfection

Perfection will typically be critical to the secured party. Without perfection the security interest is vulnerable in insolvency and to third parties.

Perhaps the best way to think of perfection is that it is the quality that broadcasts the existence of the security to those who might otherwise be lured into providing credit by the apparent wealth “of the grantor

A security interest in particular collateral is perfected if ALL of the following apply.

- 1 the security interest is attached to the collateral
- 2 the security interest is enforceable against a third party and
- 3 one of 3 methods have been taken to perfect the security interest: registration or possession by the secured party or control by the third party

Examples to Help Clarify

Example 1

Owner owns forklift and orally agrees to hire it to Grant. Owner delivers the forklift to Grant's warehouse. The security interest attaches to the forklift. The security interest is enforceable but only as between owner and Grant

Grant signs a lease of the forklift with owner. The security interest can be asserted against third parties

Owner goes on line and registers the security interest against Grant on the PPSR. The security interest is perfected and is capable of surviving Grant's bankruptcy or sale to a third party

Example 2

Unperfected security interest vest in the grantor on insolvency

Rotco agrees to supply widgets to Bloggs retaining title until paid. This is a security interest granted by Bloggs to Rotco

Rotco does not register (perfect) the security interest

Bloggs is bankrupted

The security interest rest in Bloggs (Rotco has lost security)

THIS IS A BASIC OVERVIEW AND LEGAL ADVICE SHOULD BE OBTAINED FOR DEATAIL INTERPRETATIONS

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