

Article Information

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You may not be as secure as you think! The issue of migrated security interests under the PPSA

The Personal Property Securities Act 2009 (Cth) deems certain security interests, which would otherwise be defective, to be valid for a specified period. After this time, these security interests will become invalid unless they are corrected.

Registration of Security Interests

The *Personal Property Securities Act 2009* (Cth) (PPSA) is legislation which began on 30 January 2012 and it created the Personal Property Securities Register (PPSR) which is a wholly electronic register of personal property security interests. It is not mandatory to register security interests on the PPSR, however failure to register means a security interest can be void on the insolvency of the grantor and the secured party may lose priority to other perfected security interests.

Certain Registrations Effective Despite Defects

One of the main reasons for the introduction of the PPSA was to establish a single register where it would be possible to undertake searches of security interests affecting personal property. To this end, a number of registers which existed prior to the PPSA that were created under State, Territory or Commonwealth laws and contained security interests in personal property, including the Register of Encumbered Vehicles, Bills of Sale Register (including the Register of Liens on Crops of Sugar Cane) and the Register of Company Charges (Transitional Registerers) ceased to be operative once the PPSA began and the data from those registers was "migrated" to the PPS Register.

Due to the proscriptive requirements for information required to be included in a registered security interest on the PPSR, a number of these "migrated" security interests contain defects or omissions in data on the PPSR.

In order to maintain the effectiveness of these migrated security interests, the PPSA deemed certain migrated security interests that would otherwise be defective, to be valid for a certain period to allow the secured party time to remedy these defective registrations.

Under the *Personal Property Securities (Migration Security Interests and Effective Registration) Determination 2011* (the Determination) the Registrar explained the types of security interests which are deemed to be valid, despite being defective to include security interests that:

- relate to personal property which are subject to a security interest and were registered on a Transitional Register
- the registration of the security interest was effective on the Transitional Register immediately before the interest was transitioned onto the PPSR
- the security interest was registered on the PPSR and is defective by including or omitting data, whether or not that data was recorded in the Transitional Register.

This temporary period of effectiveness is intended to allow secured parties reasonable time to amend migrated registrations so that the data contained in the registrations are in accordance with the PPS legislative requirements.

Defective Registrations

The PPSR can be searched by reference to either the grantor's details or, in the case of serial numbered property, the unique serial number referable to that property. Searching the grantor's details discloses any security interests registered against a particular grantor, while searching against the serial number for serial numbered property discloses any security

interest claimed in respect of that property. The details required to be registered are prescribed by the PPS Regulations.

Under the PPSA a registration will be declared ineffective for any of the following:

- where the personal property is required to be described by serial number in the PPSR and no search of the PPSR by reference to the serial number is capable of disclosing the registration
- where the personal property is not required to be described by serial number in the PPSR and no search of the PPSR by reference to the relevant grantor's details are capable of disclosing the registration
- if the security interest is registered as a purchase money security interest when the security interest is not a purchase money security interest
- if the registration is "seriously misleading".

The meaning of the term "seriously misleading" is not defined in the PPSA but has been held by case law to include a registration which is not capable of being discovered by a search on the PPSR.

A common example of a defective registration is a registration of a security interest held over a motor vehicle which is required to be described by reference to its Vehicle Identification Number (VIN).

If the VIN is not recorded accurately on the registration, for example by omitting one number or letter in its 17-unique character code, then this will mean a search of the VIN on the PPSR will not disclose the registration and therefore render the whole registration invalid. An invalid registration could potentially result in the secured party losing their priority or ownership of the motor vehicle.

The protection afforded to defective migrated security interests that have a stated end time will end on that stated end time and for defective migrated security interests that have no stated end time, the protections will end on 30 January 2017.

Consequently, registrations will become ineffective unless, at or before the relevant time, the registration is amended to correct the defect. If you hold a migrated security interests which may be defective and wish to ensure that your rights are protected, please contact a member of our team.