

# CRUNCH

## SVPARTNERS

Insolvency Accountants and Business Solutions

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### The World of Financing as we know it to Change Forever

As most of you may know, implementation of the Personal Properties Securities Reform ("PPSR") is nigh! (Although its start date has been postponed until 11 October 2011).

The PPSR will see a complete overhaul of the process for securing finance in Australia. It aims to make it easier for businesses to use assets to obtain finance, whilst promoting micro and SME credit, through clearer rules for protecting and enforcing secured interests in property.

However, as you read through this newsletter, it will become apparent that the regime may have its complexities and will provide new challenges to the insolvency industry. Fortunately, our New Zealand friends have been down this path before and say there is light at the end of the implementation tunnel, because their PPSR has resulted in increased certainty and confidence for commercial transactions.

#### Background

The PPSR will align the various laws and over 40 security registers currently in operation in each state and territory, into one. The PPSR will allow lenders, suppliers and any other party with a "secured interest" to attach their security to particular property and register their interest on an online Register of Securities (excludes real property which will remain subject to State based legislation).

#### 1st in Best Dressed

Whilst the Personal Property Securities Act 2009 stipulates various default rules for priority to assets in an insolvency event, it is highly likely that **the first secured party to register and perfect it's interest in property will have priority.**

This general rule is subject to special rules for Purchase Money Security Interests ("PMSIs"), being interests in relation to particular items of property.

Typical examples are goods supplied on a Retention of Title Basis (RoT). PMSIs obtain special priority, provided they are properly registered.

With this in mind, it is imperative secured parties redraft their security documentation to align to the new legislation in preparation and ensure that any currently unregistrable security interests, such as RoT interests, be registered on implementation of the scheme.

#### Interesting Observations from the Insolvency Perspective:

- A secured party who fails to register and perfect their claim can lose their priority to property and rank along with unsecured creditors in an insolvency event;
- When appointed by a creditor with a secured interest, due diligence needs to be conducted to ensure that the appointment is made by the creditor with the highest ranking priority;
- The volume of creditors who are likely to claim security interests can potentially increase dramatically. The necessity to adjudicate on these claims may add complexities, costs and extend the timeframe to conduct otherwise simple insolvency events;
- Employees entitlements may no longer be entitled to priority to realisations from circulating (floating) assets, so the pool of funds usually available for employee entitlements may be substantially reduced;



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- Selling businesses and assets either an encumbrance or with encumbrances will have added complexities;
- Transactions in the “ordinary course of business” are free of security interests in an insolvency event, as are low value consumer transactions of less than \$5,000;
- Even if a party owns an asset, or has an unperfected security interest, priority to the asset may be lost in an insolvency event.

An example of such is supplies provided on a RoT Basis to a client, or an asset owned by you in the possession of someone else.

The owners of such goods will need to register and perfect their interest in order to guarantee their priority to that property;

- Security interests in goods to which the identity has changed, ie through manufacturing/processing, will continue to be retained rather than lost. Before the PPSR, RoT interests were invalid in an insolvency event where the identity of the asset had been changed by processing into final goods;

In an insolvency event, the proceeds of any such assets will need to be distributed in accordance with the defined priorities, usually the 1st registered security interest holder will have priority, subject to goods in possession or “control” of the secured property and security interests known as Purchase Money Security Interests (“PMSIs”);

- Suppliers of goods sold on RoT can register their interests as PMSIs in relation to purchase monies owed by the purchaser, giving priority to these monies over ordinary registered interests. However, security interests perfected by “control” e.g. when the security interest holder has possession of the RoT goods or other secured property, have the highest priority;
- RoT “all monies” clauses will not have special priority;
- Transactions with secured creditors don’t come into the realm of preferential payments which a Liquidator can make voidable.

The PPSR will convert many creditors into “secured

creditors”, which means that parties such as RoT creditors will no longer be concerned with a Liquidator clawing back payments received in preference to other creditors;

- Secured Interests may now extend to the proceeds arising from the disposal of secured property, such as proceeds of sale of RoT goods, or insurance proceeds.

Therefore, in an insolvency event, a break-down of the sources of funds at bank needs to be conducted. This could have implications for insolvency practitioners with respect to remuneration and fee indemnities are likely to become more common;

- In addition, adjudicating between the competing claims of a receivables financier and an RoT creditor claiming priority to proceeds of sale, may create issues.
- Title to assets is no longer paramount!!!

With more creditors competing for rights to various assets, an insolvency practitioner’s sphere of influence will have to change to navigating through the potentially extensive priorities to assets.

*Whilst the regime is still subject to inevitable amendments, it will take time for the business world to come to terms with the changes on foot, and implementation of the regime is likely to result in initial uncertainty. So, the sooner we understand the implications of the new legislation, the sooner we can start to plan to manage implementation of the reform for the benefit of our clients.*

### Sign off

Referrals and long term relationships created through outstanding services are very important to our business.

If you, a friend, work colleague or family member have any insolvency queries or require information about any of the services provided by the SVP Group, please feel free to give a member of our team a call. 1800 246 801.

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