

Does the *Personal Property Securities Act 2009* apply to you?

A Cornwall Stodart questionnaire

The *Personal Property Securities Act 2009* (Cth) (**PPSA**) is set to commence in May 2011. The PPSA is a new 'one stop shop' regulating the creation and enforcement of security interests in personal property.

It is one of the most significant changes to business law we have seen in a long time and will leave its mark on the way customers, manufacturers, retailers, suppliers, banks and financiers do business. Those affected will be required to reassess their existing and future arrangements for taking security over personal property, prepare new policies, redraft contracts and identify transactions that will now be regulated under the PPSA.

Throughout the second half of 2010, Cornwall Stodart gave presentations to clients about what the PPSA will mean for them.

As part of our ongoing information campaign, Cornwall Stodart has prepared the following indicative questionnaire to help you assess whether the PPSA will apply to you.

If you answer 'Yes' to any question, we recommend you consult us as soon as possible for more detailed and specific advice.

The questionnaire is not an exhaustive one; if none of the questions apply to you but you wish to know more about the PPSA, please contact:

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ARE YOU PARTY TO AN OPERATING LEASE?

Why is this important?

An operating lease is an agreement whereby the lessor allows the lessee to use an item for an agreed period of time in return for a payment or series of payments. Ownership of the item remains with the lessor. Equipment hire will often take the form of an operating lease.

Operating leases will be security interests.

In order to protect their right to the goods, lessors will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the lessee entering into liquidation, voluntary administration or bankruptcy. Lessors will also lose priority to other registered security interests.

Lessees will need to be aware of the security interests that can be registered against them and/or their goods.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

ARE YOU PARTY TO A FINANCE LEASE?

Why is this important?

A finance lease is similar to an operating lease in that it is an agreement whereby the lessor allows the lessee to use an item for an agreed period of time in return for a payment or series of payments. However it differs in that the lessor transfers to the lessee the majority of the risks and benefits incidental to ownership of an asset. As a result the lessee, in effect, owns the item and recognises it as their asset.

Finance leases will be security interests.

In order to protect their right to the goods, lessors will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the lessee entering into liquidation, voluntary administration or bankruptcy. Lessors will also lose priority to other registered security interests and parties who buy the goods from the lessee will take them free of the lessor's unregistered security interest.

Lessees will need to be aware of the security interests that can be registered against them and/or their goods.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

ARE YOU PARTY TO A HIRE-PURCHASE AGREEMENT?		
Why is this important?	Yes	No
<p>A hire-purchase arrangement is an agreement whereby the purchaser pays an initial deposit and takes possession of the item. The purchaser then makes repayments on the item. After all the repayments are paid over a specified period, ownership of the item passes to the purchaser.</p> <p>Hire-purchase arrangements will be security interests.</p> <p>In order to protect their right to the goods, suppliers will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the purchaser entering into liquidation, voluntary administration or bankruptcy. Suppliers will also lose priority to other registered security interests.</p> <p>Purchasers will need to be aware of the security interests that can be registered against them and/or their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
ARE YOU PARTY TO EQUIPMENT SUPPLY?		
Why is this important?	Yes	No
<p>Equipment supply is an arrangement whereby manufacturers and wholesalers supply equipment or other goods to retailers, such as signage, display equipment, coffee machines, umbrellas and the like.</p> <p>These items may be security interests depending on the arrangement.</p> <p>In order to protect their right to the goods, manufacturers and wholesalers will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the retailer entering into liquidation, voluntary administration or bankruptcy. Manufacturers and wholesalers will also lose priority to other registered security interests.</p> <p>Retailers will need to be aware of the security interests that can be registered against them and/or their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
ARE YOU INVOLVED IN THE BAILMENT OF GOODS?		
Why is this important?	Yes	No
<p>The bailment of goods is an arrangement whereby goods (usually cars or equipment) are put in the possession of (bailed to) a dealer by a financier. The financier is the owner of the goods. Just before a customer sale, the goods are sold by the financier to the dealer and then the dealer on-sells the goods to the customer.</p> <p>The PPSA can override the legal rule that a person cannot take legal title from someone who does not have it. As a result, customers may be allowed to take goods free of legal ownership from dealers (regardless of whether or not the goods have been sold by the financier to the dealer first).</p> <p>Bailed goods will be security interests.</p> <p>In order to protect their right to the goods, financiers will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the dealer entering into liquidation, voluntary administration or bankruptcy. Financiers will also lose priority to other registered security interests and customers who buy the goods from the dealer will take them free of the financier's unregistered security interest.</p> <p>Dealers and customers should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
ARE YOU INVOLVED IN THE CONSIGNMENT OF GOODS AND/OR FLOOR PLAN ARRANGEMENTS?		
Why is this important?	Yes	No
<p>The consignment of goods is an arrangement whereby the consignor delivers goods to the consignee under an agreement that the consignee sells the goods. The consignor retains title to the goods until the consignee has sold them.</p> <p>Consignments will usually constitute security interests.</p> <p>In order to protect their right to the goods, consignors will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the consignee entering into liquidation, voluntary administration or bankruptcy. Consignors will also lose priority to other registered security interests and customers who buy the goods from the consignee will take them free of the consignor's unregistered security interest.</p> <p>Consignees should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>

ARE YOU PARTY TO A CONDITIONAL SALE AGREEMENT?		
Why is this important?	Yes	No
<p>A conditional sale agreement is an agreement to sell. Ordinarily, the supplier will grant the purchaser possession of the goods, but will withhold title until payment for the goods is made in full.</p> <p>Conditional sale agreements will be security interests.</p> <p>In order to protect their right to the goods, suppliers will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the purchaser entering into liquidation, voluntary administration or bankruptcy. Suppliers will also lose priority to other registered security interests and customers who buy the goods from the dealer will take them free of the financier's unregistered security interest.</p> <p>Purchasers should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
ARE YOU PARTY TO ANY RETENTION OF TITLE ARRANGEMENTS?		
Why is this important?	Yes	No
<p>A retention of title arrangement occurs in circumstances where payment is due after the delivery of goods and title to the goods does not pass until payment is made.</p> <p>Retention of title arrangements will constitute security interests.</p> <p>In order to protect their right to the goods, suppliers will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the goods in the event of the purchaser entering into liquidation, voluntary administration or bankruptcy. Suppliers will also lose priority to other registered security interests and customers who buy the goods from the dealer will take them free of the financier's unregistered security interest.</p> <p>Purchasers should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
ARE YOU PARTY TO A CHATTEL MORTGAGE?		
Why is this important?	Yes	No
<p>A chattel mortgage is an agreement whereby a borrower pledges personal property to a lender as security for a debt.</p> <p>A chattel mortgage will be a security interest.</p> <p>In order to protect their right to the borrower's personal property (the security), lenders will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the property in the event of the borrower entering into liquidation, voluntary administration or bankruptcy. Lenders will also lose priority to other registered security interests and customers who buy the goods from the borrower will take them free of the financier's unregistered security interest.</p> <p>Borrowers should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>
DO YOU OFFER MACHINERY, STOCK, WORK IN PROGRESS OR ANY OTHER ASSETS AS SECURITY?		
Why is this important?	Yes	No
<p>Pledging assets as security for a borrowing will take on many of the characteristics of a chattel mortgage.</p> <p>These arrangements will be security interests.</p> <p>In order to protect their right to the borrower's personal property (the security), lenders will need to register their interest and redraft supply terms. If they fail to do so, they will lose their rights to the property in the event of the borrower entering into liquidation, voluntary administration or bankruptcy. Lenders will also lose priority to other registered security interests and customers who buy the goods from the borrower will take them free of the financier's unregistered security interest.</p> <p>Borrowers should be aware of the interests that can be registered against them/their goods.</p>	<input type="checkbox"/>	<input type="checkbox"/>

DO YOU GRANT OR ARE YOU SUBJECT TO ANY FIXED OR FLOATING CHARGES?		
<p>Why is this important?</p> <p>A charge is a form of security granted from a creditor over the assets of a company. The creditor has no immediate right over the assets but upon crystallisation of the charge the creditor may enforce its security against the assets covered by the charge.</p> <p>The PPSA does not expressly provide for fixed and floating charges but does make it clear that any such arrangements will be security interests.</p> <p>In order to protect their right to a company's assets, chargees will need to register their interest and redraft supply terms. If they fail to do so, they will lose title to the property in the event of the chargor entering into liquidation, voluntary administration or bankruptcy. Chargees will also lose priority to other registered security interests and customers who buy the goods from the chargor will take them free of the chargee's unregistered security interest.</p> <p>Chargors should be aware of the interests that can be registered against them/their goods.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
DO YOU HOLD ANY INTELLECTUAL PROPERTY ASSETS OR DEAL IN GOODS WITH ASSOCIATED INTELLECTUAL PROPERTY RIGHTS?		
<p>Why is this important?</p> <p>Intellectual property assets include certain rights relating to patents, trade marks, copyright, designs, plant breeder's rights and circuit layouts rights.</p> <p>The PPSA contains specific rules relating to security interests that have intellectual property rights associated with them.</p> <p>Clients with intellectual property assets will be able to use their assets as security.</p> <p>If you are the recipient of security in the form of an intellectual property asset, you will need to register your interest to protect your rights to the asset. If you fail to do so, you will lose title to the property in the event of the grantor entering into liquidation, voluntary administration or bankruptcy. You will also lose priority to other registered security interests.</p> <p>Grantors should be aware of the interests that can be registered against them/their intellectual property assets.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
DO YOU IMPORT/EXPORT GOODS OVERSEAS?		
<p>Why is this important?</p> <p>Particular issues will arise where parties take security interests over assets that are located overseas or from parties who are incorporated overseas.</p> <p>For example, in order ensure that an interest is secured, it may be necessary to register a security interest both in Australia and overseas (where that can be done).</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
DO YOU TRADE IN RECEIVABLES?		
<p>Why is this important?</p> <p>Trading in receivables describes an arrangement whereby a business sells its accounts receivable (ie, invoices) to a third party (called a factor) at a discount in exchange for immediate money that they then use to continue carrying on business. Trading in receivables is also referred to as factoring.</p> <p>Assignments of receivables are security interests.</p> <p>In order to protect their right to the receivables, factors will need to register their interest. If they fail to do so, they will lose title to the receivables in the event of the business entering into liquidation, voluntary administration or bankruptcy. Factors will also lose priority to other registered security interests.</p> <p>Businesses that factor their receivables should be aware of the interests that can be registered against them/their goods.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
DO YOU HIRE EQUIPMENT FOR USE ON CONSTRUCTION SITES?		
<p>Why is this important?</p> <p>Equipment hired for use on construction sites such as portable offices, scaffolding and fencing under contractual arrangements may be security interests.</p> <p>In order to protect their rights to the hired equipment, contractors may need to register their interest and redraft supply terms. If they fail to do so, they may lose their rights to the temporary works in the event of the hirer entering into liquidation, voluntary administration or bankruptcy. Contractors will also lose priority to other registered security interests.</p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>