

ALERT

29 NOVEMBER 2012

PPSR update released

On 22 November 2012, the Insolvency and Trustee Service (ITSA), which manages the Personal Property Securities Register (PPS Register), issued a PPS Register update. Below we summarise the key content of this update and its likely impact on businesses. The update can be found at www.ppsr.gov.au.

Statistics: Use of the PPS Register

The update sets out a series of statistics concerning the use of the PPS Register during the July to September 2012 quarter. The statistics for the quarter include:

- 1,567,325 searches undertaken, of which 962,577 were by serial number (including 955,678 concerning motor vehicles) and 488,758 were by organisational grantor;
- 6,943,158 registrations were recorded, of which:
 - 5,676,852 were transitional security interests and 1,259,425 were non-transitional security interests; and
 - the three most frequently registered collateral classes were general security interests (ie 'all present and after acquired property') (1,865,575 registrations), 'motor vehicles' (3,821,819 registrations) and 'other goods' (944,649 registrations);

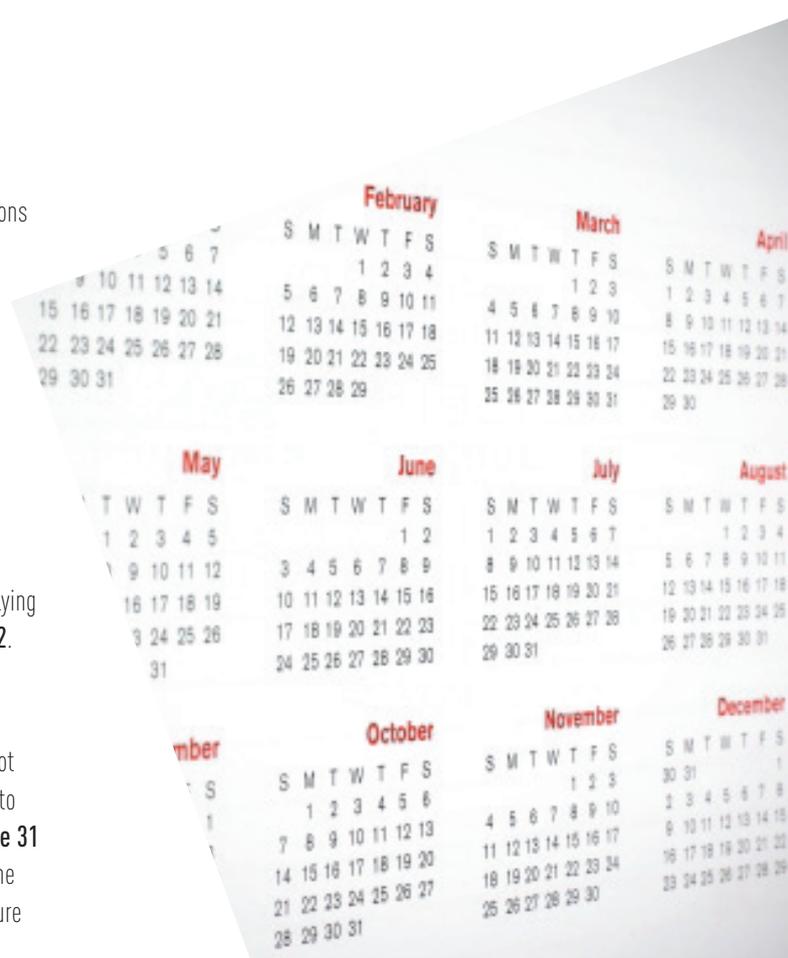
- 358,489 transactions occurred to discharge or remove a registration. As one transaction can affect multiple registrations, this may not reflect the number of registrations actually removed.

Further statistics concerning the PPS Register can be found at www.ppsr.gov.au.

ASIC missing charges: Payment application deadline

Our Alert of [30 August 2012](#) set out the circumstances in which companies that have been affected by the technical errors experienced in the migration of the ASIC Charges register to the PPS Register may apply for compensation. The deadline for applying for this compensation has been extended to **30 November 2012**. Please let us know if you consider that you may be entitled to compensation.

We remind you that any pre-30 January 2012 charges that did not properly migrate from the ASIC Register of Company Charges onto the PPS Register **must** be registered on the PPS Register **before 31 January 2014**. It is the responsibility of the secured party (ie the charge-holder) to ensure that this registration takes place. Failure



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to undertake this re-registration may result in the secured party losing its rights under the relevant charge.

Searching the PPS Register

The update reminds readers that searches of the PPS Register must be for an authorised purpose, as set out at section 172 of the PPSA. The authorised purposes are broad and include:

- disclosing registrations in relation to which the searcher is a grantor or secured party;
- to establish whether to provide credit to, obtain a guarantee or indemnity from, or invest in / with / through the individual or body corporate the subject of the search;
- creditors searching for a purpose relating to the enforcement of a lien, charge or creditors rights;
- secured parties or grantors searching for a purpose related to

the security interest described in the registration;

- determining whether collateral is the subject of a registration, particularly if the searcher is to purchase, or otherwise has an interest in, that collateral; and
- searches by a controller of property of an insolvent business / individual in relation to the searcher's control of that property.

If a person or entity conducts a search that is not for an authorised purpose within section 172, the searcher may be liable for a civil penalty fine of 50 penalty units for an individual (currently, a total of \$5,500) and 250 penalty units for a body corporate (currently, a total of \$27,500). Please note: under the Crime Bill introduced to parliament on 10 October 2012, penalty units are proposed to increase from \$110 to \$170 per unit. This would increase the amount payable for a breach of section 172.

Update of the PPS Register

As set out in our previous Alerts, various technical difficulties occurred in the implementation of the PPS Register. ITSA has been working to rectify these defects. The most recent defects that have been remedied are:

- Address for service
Between 30 January 2012 and 19 July 2012, when a secured party amended its address for service on a registration, links to any attachments to that registration were lost. On 19 July 2012 a solution was implemented to stop this error occurring in the future and to remedy affected registrations. For

existing registrations affected, it is necessary to amend the registration in some form or manner in order for the remedy to take effect. If any of your registrations were affected, we recommend that you undertake this amendment to allow the remedy to take effect.

- Hull Identification Numbers (**HINs**) and Serial Identification Numbers (**SINs**): Watercraft and outboard motors

Details of the HINs and SINs for watercraft and outboard motors migrated from the Queensland Register of Encumbered Vehicles included some errors. The known errors have now been rectified. Further information regarding the known issues and their solutions can be found at www.ppsr.gov.au.

- Code 4 (**C4**): Update to the PPS Register

An update was provided on C4, a system update that affects several aspects of the PPS Register. The 'functionality' component of C4 was completed on 18 November 2012. This includes:

- enrolment of a credit card at an account level, such that users no longer need to enter credit card details each time they log in;
- the ability to download and mail search results in XML format or PDF format (rather than just XML format);
- more user friendly navigation between different areas of the PPS Register;
- inclusion of 'no end time' registrations when searches are



undertaken of a grantor in a date range;

- update to information shown on tax invoices and receipts;
- a more consistent approach to displaying organisational identifiers; and
- amendments to the manner in which aircrafts are described by serial number.

Farming and agriculture

Insofar as specific issues are concerned, ITSA highlighted the application of the *Personal Property Securities Act 2009 (PPSA)* to farming and agriculture as a special consideration in this update. ITSA has released a revised fact sheet concerning farming and agriculture and the PPSA.

Key aspects of the Fact Sheet include the following:

- a brief, high level summary of the application of the PPSA to agricultural producers. In short, under the PPSA:
 - financiers and other holders of a security interest in items used for growing crops and/or livestock (eg grain, fertiliser) can extend their rights to include the relevant crop / livestock grown;
 - as a result, careful consideration needs to be given to the ranking of creditors' rights in crops and livestock. Extensive rules are contained in the PPSA for this purpose; and
 - suppliers of goods that are later commingled with other goods to become processed foods (eg pineapples into

canned mixed fruit) may continue their rights in the processed foods (eg the canned mixed fruit) in certain circumstances;

- a brief explanation of the PPS Register; and
- two case studies, as follows:
 - Case Study 1 concerns financing livestock and illustrates a situation whereby the financier of certain livestock may have a higher priority right than a holder of a general security interest (previously, fixed and floating charge) over the relevant business;
 - Case Study 2 concerns suppliers of fresh produce to food markets on retention of title rights and raises some of the key issues that suppliers should consider, namely updating terms and conditions of supply and the requirement to perfect (generally, register) your rights. A further requirement not mentioned in Case Study 2 is that if a supplier wishes to maximise its claim in the event of the purchaser's liquidation / administration, the supplier's stock should be capable of being distinguished, both from other suppliers' stock and between paid and unpaid stock by the same supplier.

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Application of the PPSA and PPS Register to businesses and individuals, and to farming and agriculture, remains complex. If you have any questions, please contact:

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