Personal Properties Securities Act 1999: NZ’s new regime

The Personal Properties Securities Act 1999 came into force in New Zealand on 1 May 2002. The new legislation is a major reform of the law relating to security over personal property, which has application for Australian companies operating, or lending funds, in New Zealand, writes AAR Partner Ben Parsons.

**Background**

New Zealand’s Personal Properties Securities Act 1999 (PPSA) creates a new online registration regime which captures a wide range of transactions, some of which have not needed to be registered in the past, for example, chattel leases, reservation of title clauses and assignments. Registration is not compulsory but is useful for protection of priority.

**Scope**

The PPSA applies to all security interests over personal property. Personal property is any property other than land and includes goods, shares and intangibles.

A security interest is “an interest in personal property created or provided for by a transaction that in substance secures the payment or performance of an obligation...”, regardless of form or the identity of the person who owns the collateral. The PPSA provides the following examples of security interests: a fixed charge, a floating charge, a chattel mortgage, a conditional sale agreement, a hire purchase agreement, a lease, an assignment or a flawed asset arrangement.

Certain security interests are excluded from the scope of the PPSA including interests in land, security interests arising by statute or operation of law, most rights of set-off, netting and combination of accounts and mortgages of ships exceeding 24 metres.
PPSA codifies the priority rules between competing security interests. It also provides statutory rules for third parties (such as purchasers and lessees) to acquire interests in collateral free of security interests.

PPSA also regulates the enforcement of security interests over personal property.

**How it affects you and what you should do**

If you have had, or propose to have, dealings with entities or personal property in New Zealand, then PPSA may be relevant to you. So that you are not prejudiced under PPSA, you should take the following steps.

1. Identify any existing security interests that you hold which are, or may be over, New Zealand assets. This would include assets which may be taken to New Zealand (for example, planes) or where you hold a fixed and floating charge from a company which holds, or in the future may have, personal property in New Zealand.

All existing security interests over personal property must be registered under the PPSA during the six-month transitional period ending on 31 October 2002 in order to protect their current priority position. This is so even if they are already registered (for example, charges with the companies office) or are not registrable under the pre-PPSA law (for example, certain leases and retention of title clauses).

Registration will be a simple procedure involving the lodging of a financing statement through an internet site.

2. Review and update any existing standard documentation which may affect New Zealand assets to ensure that it is appropriate in the PPSA environment.

3. Put in place procedures to deal with changes in the security position (as the onus to keep the Register up to date is placed on the secured party) and to renew each registration before its expiry (being, at most, five years from registration).

As PPSA is a New Zealand Act, for any detailed advice or assistance you should contact your New Zealand lawyers. If you do not have a relationship with a New Zealand firm, we suggest you contact the following people at Simpson Grierson. Both are very familiar with PPSA and the firm is a leader.

**Simpson Grierson Partners**

Steve Flynn  
Partner, Wellington  
steve.flynn@simpsongrierson.com  
Ph: +64 4 924 3405

Mariette van Ryan  
Partner, Auckland  
mvr@simpsongrierson.com  
Ph: +64 9 977 5018

For further information, please contact:

**Allens Arthur Robinson Partners**

Ben Parsons  
Partner, Sydney  
Ben.Parsons@aar.com.au  
Ph: +61 2 9230 4920

Diccon Loxton  
Partner, Sydney  
Diccon.Loxton@aar.com.au  
Ph: +61 2 9230 4791

Steve Pemberton  
Partner, Melbourne  
Steve.Pemberton@aar.com.au  
Ph: +61 3 9613 8826

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