

Article Information

Authors: Mark Gordon, Sam Jennings

Service: Personal Property Securities, Property & Development

Sector: Infrastructure

One week to go - register your transitional security interests or lose them!

The temporary perfection period for transitional security interests is ending at midnight on 31 January 2014

The temporary perfection period for transitional security interests is ending at midnight on 31 January 2014. Secured parties must immediately ensure their transitional security interests are perfected by registration on the Personal Property Securities Register in order to ensure their interests are protected.

What is a TSI?

Transitional security interests (TSIs) are security interests which arise under a security agreement created before 30 January 2012 (the “registration commencement time” (RCT) under the *Personal Property Securities Act 2009* (Cth) (PPSA)). A large number of TSIs automatically migrated onto the Personal Property Securities Register (PPSR) at the RCT, however, certain TSIs did not automatically migrate onto the PPSR and must be registered manually.

Consequences for not registering?

Unless perfected by other means under the PPSA, such as control or possession, TSIs that did not migrate onto the PPSR at the RCT must be registered on the PPSR by midnight on 31 January 2014 (End Time). Failure to register will expose secured parties to the risk of losing their title, interest and/or priority in the relevant collateral (which collateral in some cases will be the secured party’s own property).

Examples of affected TSIs

TSIs that require urgent attention will be: (i) TSI’s that were not registrable on a “migrating register” before the RCT (this can include any arrangement which, in substance, secures the performance of an obligation); and (ii) arrangements, rights and interests which were not considered to be “security interests” before the commencement of the PPSA.

The most common rights which were not considered to be “security interests” before the commencement of the PPSA are retention of title (ROT) rights (i.e. the rights of suppliers who supply goods on retention of title terms). Such rights must be registered on the PPSR as security interests immediately.

In addition to ROTs, the following are deemed to be “security interests” regardless as to whether or not they secure the performance of an obligation and were not considered to be “security interests” before the commencement of the PPSA. If such security interests came into existence before the RCT, they must be perfected by registration on the PPSR by the End Time:

The interest of a lessor or bailor of goods. Such security interests are likely to arise if one party (the grantor) is in possession of another party’s (the secured party’s) goods or equipment for an extended period (on loan or otherwise).

The interest of a transferee of an account. This will be relevant for all assignees and transferees of accounts receivable. In particular, receivables financiers and debt factors will hold such security interests.

The interest of a transferee of a chattel paper. This will include the interests of persons who have been assigned the benefit of a security interest in or lease of goods and a related monetary obligation.

The interest of a consignor under a commercial consignment. Any person who provides goods to another party to hold on consignment will need to register its security interest.

All similar security interests arising after the RCT must also be duly perfected in accordance with the PPSA.