

Personal Property Securities Act 1999

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Do you remember words like “debenture”, “chattel security”, “romalpa clause” and “instrument by way of security”? These were part of a piecemeal system of securities that grew up over many years and under many different Acts. There were registers kept in the High Court and in the Companies Office, and sometimes no record needed to be kept at all, which made it very difficult for anyone dealing with the property to know whether any lender had more of a claim over the asset than they did.

In order to tidy up this area, the Personal Property Securities Act (“the Act”) was passed. This did away with all of the other forms of security and the other registers, and replaced them with a single totally electronic and totally paperless register called the Personal Property Securities Register. It can only be accessed through the internet and registration can take place at any time, can only be done on-line and will be effective immediately. Any property, with the main exceptions of land and ships, which secures a payment or the performance of an obligation (“a security interest”), will be covered by the Act no matter what form the transaction takes and whether a company or an individual is involved.

It now makes finding out whether something is subject to a charge a lot easier.

In the past, any registered security remained effective until a withdrawal or satisfaction was registered. This was annoying especially if the chargeholder couldn’t be found. Under the Act registration of a security interest will now only last for 5 years or a shorter period if one is selected, and at the end of that time, the interest will be automatically removed from the register although it can be renewed for a further 5 years if the correct procedure is followed.

The Process:
A Financing Statement (containing brief particulars of the charge, property, debtor and creditor etc) must be registered. During the registration process, the Financing Statement is pending and has no legal status

until all of the information is provided. Once all of that information is available, the Financing Statement is submitted for registration. The computer checks to make sure that all the mandatory information is there (although it doesn’t check whether that information is correct). When the registration fee is paid, the Financing Statement is registered and a Registration Number and PIN are e-mailed out in a Verification Notice. A Financing Statement can be discharged at any time and once discharged cannot be reinstated.

The whole system relies on the accuracy of the information given and it is important that the person registering the Financing Statement gets all the information correct. Any mistakes, even mistakes that seem relatively minor, can be seen as material and can prevent the enforcement of the security against the debtor.

Financing Statements will have priority in the order that they are registered and so a delay in registration or the failure to register can mean the ability to enforce the security is lost in favour of other creditors who may have lesser claims but registered quicker. This does not release the debtor from an obligation to pay the creditor any amounts outstanding, however it does prevent the creditor from enforcing its security ahead of anyone else who has registered theirs. In most cases, this will mean that the security is effectively worthless.

This system is far easier to understand, to regulate and to search, however it is important under the Act to register an interest early to make sure that it is really worth something.

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