

Protecting your Priority as a Creditor

It is surprising how many creditors still lose priority to other creditors by not registering their security document under the Personal Property Securities Act 1999 (PPSA).

Prior to the PPSA, someone who was involved in lending, leasing, supplying goods on credit, or other similar activities had to register their security in different locations, including the Companies Office.

The PPSA provided a single online location, where suppliers and creditors can:

- a. find out whether there are any existing security interests over their customers' personal property (other than land or large boats); and
- b. register their "security interest" i.e. a charge over a debtor's "personal property" (not land).

Registration of a 'security interest' under the PPSA is not compulsory. However, if a creditor fails to register, he or she may lose priority to another creditor who does register.

A supplier generally only has to register once in respect of each customer (not every time goods are supplied), and then renew the registration every five years.

There are time limits for registration – generally, on or before delivery in the case of inventory, and within ten working days for other assets.

A 'security interest' includes such things as:

- A General Security Agreement, which creates a charge over all of the assets of a company (previously called a debenture)
- A retention of title clause – where legal ownership in goods supplied is retained by the supplier until paid for in full.
- The lease of goods or equipment for more than one year.
- An agreement to supply goods on consignment.

This is a brief summary, but the two main points to remember are:

1. Suppliers/lessors of goods must make sure that their terms and conditions are worded appropriate to reflect the current law.
2. They (and other creditors) must make sure that they register under the PPSA within the time limit to protect those legal rights.

This information is designed as a general guide and should not replace specific legal advice on a particular issue

Article provided by Mike Toepfer from Aspiring Law