

Personal Property Securities Act 2009 – a whole new world of securities!

Commencement of the Act has again been delayed due to an Amendment Bill currently being debated by the Federal Parliament in response to concerns raised by stakeholders. It is now scheduled to come into force on a date to be set in October 2011.

In 2009, the Commonwealth Parliament enacted the *Personal Property Securities Act 2009*, replacing more than 70 pieces of legislation Australia wide and several Registers in the States and Territories.

The Act creates the Personal Property Security Register, containing details of secured property and which is available for searching by the public. The Act further contains provisions for enforcing interests on the default of a party, and rules for when property may be free of a security interest and for determining priority between competing interests.

Section 12(1) of the Act provides that a security interest is an "interest in relation to personal property provided for by a transaction that, in substance, secures payment or performance of an obligation".

A security interest is only enforceable when the grantor (debtor) has rights over or powers to transfer collateral (the personal property) and the secured party (creditor) gives value for the transfer of those rights.

The Act provides for lots of different applications, depending upon who is seeking to enforce the interest. If, for example, the parties are seeking to enforce the interest amongst themselves all that needs to be proven is that the security was attached to the property. Attachment under the Act is merely that the grantor (possessor of rights over the property) has rights to transfer their rights to the property or its use and that value or some act was done giving rise to the interest.

If the security interest is being enforced against a third party, not only is attachment necessary, but also perfection. Perfection requires that the third party has some possessory rights over the property or that there is a compliant security agreement in writing signed by the grantor.

If you have any queries in relation to how this Act may affect you personally or your business, please don't hesitate to call us on 3849 6263 or email us at reception@oneillslawyers.com.au