

Personal Property Securities Act

– Significant implications for the construction industry

The final form of *Personal Property Securities Act 2009* (Cth) (**PPSA**) was passed by the Senate on 26 November 2009 with the new legislation coming into operation in May 2011.

What is the effect of the PPSA?

The PPSA, the regulations created by the PPSA and the register to be established pursuant to them will replace the myriad of existing Commonwealth, State and Territory laws and registers for company charges, bills of sale and most other securities affecting tangible and intangible personal property rights.

With limited exclusions, the PPSA will apply to all 'security interests' in tangible and intangible personal property. Personal property is any kind of property other than land, fixtures, water rights or a right, entitlement or authority that is granted by a Commonwealth, State or Territory law and declared by that law not to be personal property for the purposes of the PPSA.

What is the relevance of the PPSA to the construction industry?

The PPSA will have particular significance to the construction industry. Some of the issues arising will include:

- retention of title clauses in construction contracts and supply agreements will be 'security interests' and will not protect a supplier's/ principal's interest on insolvency unless registered

- a new priority regime will be established which is very different to the existing Corporations Act priority provisions. In particular, priority will generally be afforded to suppliers for the purchase price of their supplies, provided they register, even though other security may be registered beforehand
- contracts will need to be reviewed and redrafted to be effective under the new regime.

What does your organisation need to do now?

Although May 2011 may seem quite far away, the effect of the PPSA will require some very significant changes to the way businesses in the construction and infrastructure sector operate and it is important in advance of the changes to understand how it may affect your business. This will require a full review of standard-form contracts, business security registers and other arrangements, which will be superseded by the PPSA.

Piper Alderman will host a series of presentations for the construction industry in early 2010 in our offices across Australia on the relevance of the new regime.

Invitations will be issued in January 2010.

Contacts

Tim Coleman

Sydney

t +61 2 9253 3831

tcoleman@piperalderman.com.au

Geoff Emmett

Melbourne

t +61 3 8665 5556

gemmett@piperalderman.com.au

Greg Whyte

Brisbane

t +61 7 3220 7712

gwhyte@piperalderman.com.au

Andrew Robertson

Adelaide

t +61 8 8205 3442

arobertson@piperalderman.com.au

Craig Wappett*

National PPS Leader

t +61 7 3220 7716

cwappett@piperalderman.com.au

* Craig Wappett is a member of the Australian Attorney General's Consultative Committee on Personal Property Securities.