Personal Property Securities Act (PPSA)

Top factors you should know

The Personal Property Securities Register has now been in operation for over 18 months. All credit suppliers who trade on Retention of Title terms (ROT) must have their interest in stock (held by their customers) registered on the PPSA register, or they will lose their rights.

There have been many presentations, discussions and industry events within the trade credit and finance sectors relating to the effects of the PPSA.

We spoke with PPSA experts Karl Hill from Results Legal and Daniel Turk from Turks Legal, what their Top 3 issues relating to PPSA at this moment in time are.

Karl and Daniel both acknowledge transitional provisions and the upcoming end of the transitional period as their number one top factor. Karl Hill says "the primary area for contention is concerning what actually constitutes a transitional security interest. The surest way to avoid the risk of a security interest being lost, is to register them both as transitional and non-transitional".

Daniel Turk reiterates that "the transitional protection period which applies to older clients meet the strict guidelines on the 30th of January 2014. It is important that suppliers ensure all their clients are registered if they want to retain their ROT rights". There have also been instances where ROT claims cannot be pursued because of a failure to register a security interest correctly.

Karl Hill notes the Purchase Money Security Interests (PMSI) as his second top factor. He says "PMSI rights are the central element of protection for retention of title and hirer/lessor creditors under the PPSA". PMSI's create a super priority which effectively means that no one has a better claim to goods than the other creditor who supplied them.
Both Karl and Daniel highlight Preference Claims as their third most important factor. Both agree that the PPSA has created an opportunity or additional ground for ROT suppliers to defend preference claims.

Essentially, Liquidators cannot bring unfair preference claims against secured creditors. Suppliers/creditors who have a perfected security interest (such as a PMSI for a Retention of Title claim) and there was sufficient value in the security (e.g. secured goods to the value of the debt or possession) the debt could be classified as secured.
Daniel Turk also adds factors surrounding creditor's proofs of debt to insolvency practitioners PPSA may also be effect under the PPSA.

There is no doubt this act has raised much confusion and misunderstanding. With the deadline for transitional periods looming (31 January 2014), it is not too late to engage AMA's support in registering your security interests, with the help of our legal partners providing advice in relation to the act.

For more information contact AMA on 1800 882 820.