

PPSA in PNG

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Key Points

- The *Personal Property Security Act 2011* (PPSA) was passed into law in Papua New Guinea (PNG) on 9 December 2011
- The PPSA is expected to be commenced in PNG in early 2016
- Once the PPSR is live, the PPSA will commence in PNG
- Secured parties in PNG have six months from the date of commencement of the PPSA to register their security interests with the PPSR or risk losing priority.

Introduction

The PPSA was passed into law in PNG in 2011. However, due to complications with the PPSR, it has not yet commenced operations in PNG. The PPSR is now expected to “go live” in PNG in early 2016. Once the PPSR is live, the PPSA will commence in PNG. [1]

The PPSA will provide for the creation, attachment, perfection, prioritisation, and enforcement of security interests in personal property. The PPSR will effectively work as a noticeboard, showing all registered security interests in personal property.

If you are the holder of a security interest in PNG it is important that you begin preparing for the commencement of the PPSA. All existing security interests in PNG need to be registered on the PPSR no later than six months after the commencement of the PPSA to ensure that you do not lose priority of your security interest.

What transactions fall within the PPSA?

A security interest is a legal interest in personal property that secures payment or performance of an obligation.[2]

Under a PPSA, any person (the debtor) may give a security interest in personal property to any other person (the secured party) as collateral. Personal property can mean goods, chattel paper, investment property, a document of title, an instrument, money or an intangible.[3]

The PPSA applies to all transactions that in substance create a security interest, without regard to its form and without regard to the person who has title to the collateral.[4]

These include, but are not limited to:

1. chattel mortgage;
2. conditional sale;
3. floating charge;
4. pledge;
5. trust indenture;
6. trust receipt
7. assignment;
8. consignment;
9. lease

10. trust;
11. transfer of chattel paper that secures payment or performance of an obligation.[5]

What are the priority rules under the PPSA?

The general priority rule under the PPSA is that the first security interest for which a notice is registered, or the first to be perfected, has priority over other security interests.[6]

Priority between conflicting unperfected security interests is determined by the order of attachment of the security interests.[7]

What does the commencement of the PPSA mean for your business?

Once the PPSA commences, there is a 180 day transition period (Transition Period) in which parties must register their security interest or otherwise risk losing their security priority. [8]

If you register your security interest on the PPSR within the Transition Period, your interest will have priority over a security interest created under the PPSA, with priority measured from the date of the commencement of the PPSA.

If you do not register your security interest within the Transition Period, the perfected status of your security interest will be determined according to the priority rules in the PPSA, and from the date of registration, instead of the earlier date allowable under the transitional provisions.

If you do not register your security interest within the Transition Period and there is a conflict between your security interest and a security interest in the same collateral which is registered under the PPSA, the rights of the latter will prevail.

Why register?

Perfection by registration on the PPSR will legally define your priority regarding security interests, with a 'first in, best dressed' principle relative to other security interests in the collateral.

This will help you to recover your debt and lessen your risk.

Next steps

Given that the PPSA regulations were not considered at the most recent National Executive Council (NEC) sitting, and are now on the list for the next NEC meeting in early December, the Asia Development Bank (ADB) has indicated that the PPSA will not commence operation until January 2016.

If you are operating in PNG, it is important that you consider whether any of your transactions fall within the meaning of security interests. These must satisfy the "substance test" – as we have already noted, transactions may be security interests in substance rather than form.

Please contact the experienced lawyers at Fairfax Legal to ensure that you don't lose priority of your security interests.

The Pacific Legal Network has previous experience advising on PPSR regimes in New Zealand, Australia and Solomon Islands.

[1] See page 2 of the Explanatory Memorandum of the *Personal Property Security Act 2011*.

[2] *Personal Property Security Act 2011* s 2(2), definition of “security interest”.

[3] *Personal Property Security Act 2011* s 2(2), definition of “personal property”.

[4] *Personal Property Security Act 2011* s 10(1)(a).

[5] *Personal Property Security Act 2011* s 10(1)(b).

[6] *Personal Property Security Act 2011* s 33(2).

[7] *Personal Property Security Act 2011* s 33(4).

[8] *Personal Property Security Act 2011* s 119.

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