



From Equifax

Experts in Personal Property Securities

AVOID PPSR REGISTRATION FAILURE

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Australian Institute of
CREDIT MANAGEMENT

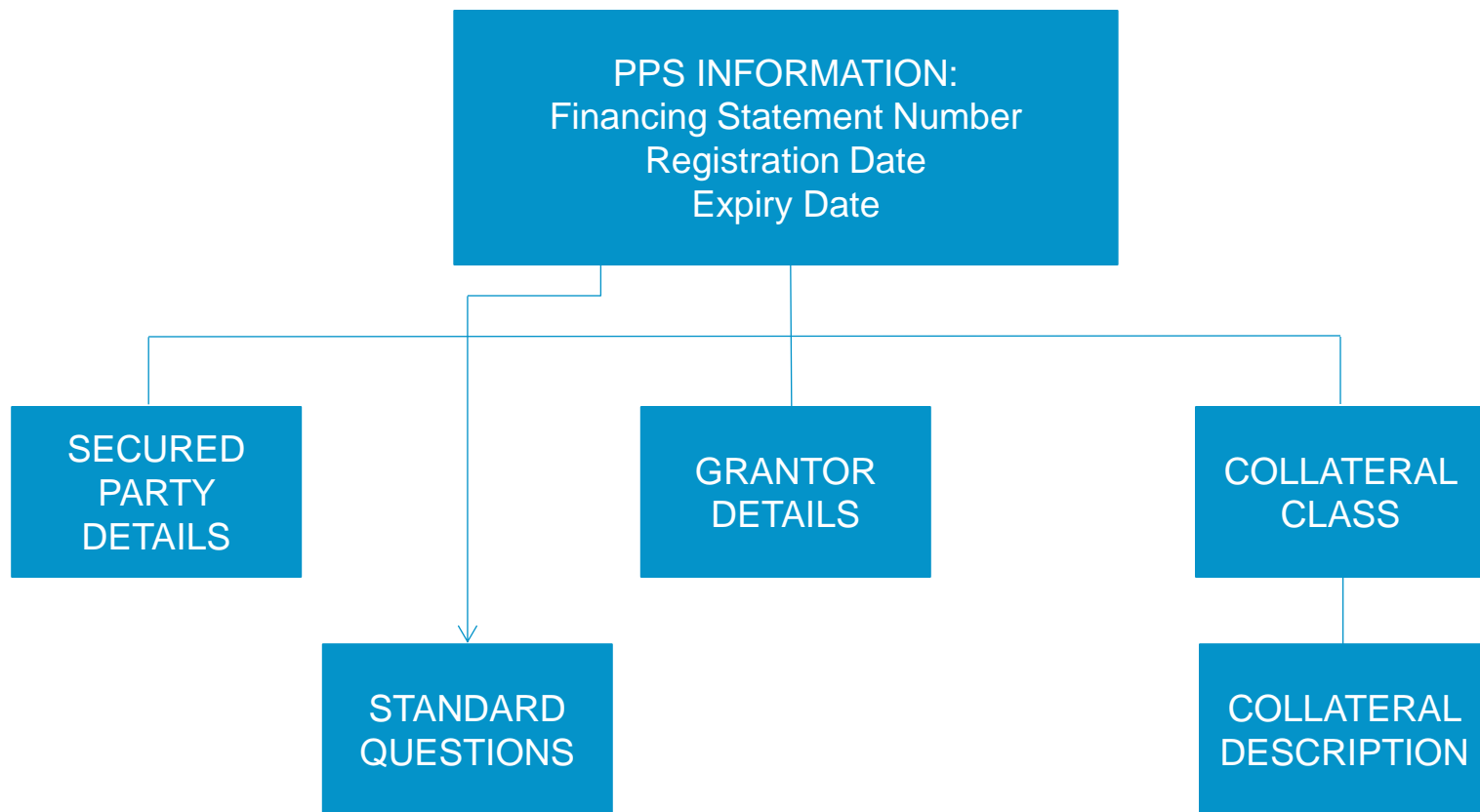
Agenda

- › What could possibly go wrong?
- › The law
- › Scope
- › Grantor identification
- › Collateral identification
- › Acceptance of terms
- › Timing
- › A word on law reform
- › Conclusion
- › Questions



What could possibly go wrong?

- › The simple structure of a financing statement



The Law

Sections 164 and 165 of the Personal Property Securities Act

Section 164

- › Invalid only if seriously misleading, or
- › Specific defect under Section 165

Section 165 covers errors in:

- › Serial numbered goods
- › Grantor identification
- › PMSI election
- › Anything prescribed in the PPS Regulations

Scope

Retention of title is clear – definitely within scope of the PPSA

› Problem areas:

- PPS lease
- Bailments
- Obscure arrangements – e.g. step in rights

› Moral: If in doubt – register, register, register

› Beware Section 151 – reasonable belief

Grantor identification

› Most common errors:

- Identify a company by ABN rather than ACN
- Identify a sole trader by ABN rather than name
- Identify a trust by name or trustee – when it has ABN allocated
- Identify a trust by ACN of corporate trustee
- Wrongly identify other organisations such as clubs or charities

Grantor identification – must get it right

- › Cross refer to the Personal Property Securities Regulations 2010
- › Schedule 1 – Part 1 if your customer does not exactly fit this description

Debtor/Grantor Type	Information required	Source
Ltd or Pty Ltd companies	ACN	ASIC
Individual and sole trader	Full name and date of birth	Driver's Licence
Partnerships	ABN of the partnership	ABN Lookup
Trusts	ABN of the trust	ABN Lookup

- › E.g. if the Trust has no ABN – cross refer to the Regs.

Other organisations

Debtor/Grantor Type	Information required	Source
Responsible Entity of a registered scheme	ARSN	National Names Index
Foreign companies and registrable Australian bodies	ARBN	ASIC
Body Politic (most often government departments)	ABN	ABN Lookup

A word on clubs, charities etc.

- › No standard entity type for these organisations
- › Process is:
 - Establish the entity type for the organisation – most often a Ltd company or a Trust
 - Register in accordance with the regulations for that entity type
 - If in doubt – take legal advice

Collateral identification

Serial Numbered Goods (Motor vehicles, aircraft, watercraft)

- › **Consumers** – register by serial number only. Invalid if error made (Section 165 error)
- › **Commercial** – general registration may suffice, but beware taking free provisions

Non serial numbered collateral

Two levels:

- › **Collateral type** – probably seriously misleading if error made
- › **Collateral description** – beware narrow descriptions (too broad may be ok).

Additional considerations

- › Proceeds election
- › Inventory selection

Acceptance of terms

Security Agreement

- › The agreement which creates the security interest and which gives rights under the PPSA
- › Normally T&Cs attached to credit application, but may be contract specific
- › To be enforceable against 3rd parties:
 - Must be in writing and
 - Adopted or accepted in another way

(Note NZ Court Case – liquidator is not 3rd party – receiver is)

Adoption or acceptance in another way

- › Each case turns on merits:
 - Terms on website may be OK for online ordering where customer is required to accept
 - May not be OK where ordering is typically by phone or fax

Timing (is everything)

PPSA Considerations

- › Most attendees will supply goods – so benefit from PMSI
 - First ranking security if registered within time:
 - Before possession passes (inventory)
 - Within 15 business days (non inventory)
 - Still a PMSI if registered out of time – but no “super priority”

Corporations Act – Section 588

- › If security interest registered more than 20 business days after creation of security agreement **and**
- › Grantor becomes insolvent within 6 months of registration, **then**
- › **Security interest vests in the insolvent company**

A word on law reform

PPSA has been criticised for being too complex

- › Statutory review commenced in April 2014 – led by Bruce Whittaker
- › Tabled in Parliament – March 2015
- › Recommended extensive simplification
- › Excellent report – but very complex – risk of getting bogged down
- › Cautioned against piecemeal changes

A piecemeal change – the current Bill before Parliament

- › Changes to definition of PPS Lease
- › Benefits to hire industry – but.....
- › Uncertainty on PMSI, vesting and scope. **Great care needed.**

Conclusion

Best practice

1. Full review of policies and procedures
2. Audit of existing registrations
3. Process remedial transactions on the PPSR to correct the position

Suggest bare minimum

1. Audit of existing registrations
2. Process selected remedial transactions on the PPSR

Questions?



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