

# The New Personal Property Securities Act and its impact on mining and energy companies in Australia from October 2011

## Registering security interests in Australia today

In Australia there are over 100 registers of security interests kept under more than 100 different Federal, State and Territory laws. These registers and laws are being administered by over 40 Australian Government agencies.

## The changes proposed?

It is proposed that, from October 2011, a single national regime which governs *security interests over personal property* will replace approximately 70 existing Commonwealth, State and Territory laws which are currently being administered by more than 30 Australian Government agencies.

The new regime is contained in the *Personal Property Securities Act* (PPSA), a Federal law.

A "Personal Property Securities Register" will be created where all forms of security interests over all personal property must be registered in order to provide the holder with the best protection and rights. Without being registered, some security interests may lose their priority over other claims or be lost altogether. The Personal Property Securities Register is designed to give certainty to people taking security over personal property and to buyers and sellers of such property.

## What is 'personal property'?

Personal property is any form of property other than land, mineral and petroleum tenements, fixtures which form a part of the land, water rights and some statutory licences.

This will include certain rights under contracts (such as joint venture and joint operating agreements), shares, motor vehicles, equipment, stock, receivables and some intellectual property.

Registration of security interests in the property excluded from the regime, such as land, will need to be made onto existing registers.

The new regime is not simple, but there are some particular complexities around mining and petroleum tenements, which we discuss below.

## Key Issues

A new security regime is being introduced into Australia in October 2011

All businesses, not just banks will be affected

Mining and energy companies are greatly affected

For rights to be protected action needs to be taken

If you would like to know more about the subjects covered in this publication or our services, please contact:

[Mark Pistilli](#) +61 28922 8001

[Michael Lishman](#) +61 892625 502

[Ian Cochrane](#) +61 892625 506

[Peter Kilner](#) +81 3 5561 6619

[Tatsuhiko Kamiyama](#) +81 3 5561 6395

To email one of the above, please use  
firstname.lastname@cliffordchance.com

[www.cliffordchance.com](http://www.cliffordchance.com)

**What is a 'security interest'?**

Broadly, a security interest is the interest of a person in property which in substance secures the payment of money or the performance of an obligation.

Some leases and other arrangements are deemed to be security interests even though they do not secure the payment of money or the performance of an obligation.

Many arrangements familiar to mining and energy companies will grant security interests of a type that are caught. Some of these are listed below.

**What are some of the many issues facing mining and energy companies?**

The PPSA will impact on a wide range of activities of mining and energy companies.

A brief overview of the impact on some key areas appears below.

*Joint ventures*

Many joint venture and joint operating agreements, even those already in place, will now be covered by the new regime. The new regime will cover such agreements with certain default clauses, dilution provisions and cross charges.

Mining and energy companies are being advised to review all of their joint venture and joint operating agreements to see if changes are necessary and whether they should be registered.

*Equipment*

Security granted over equipment, including some equipment leases, may now constitute security interests which should be registered.

Careful consideration needs to be given as to whether equipment is a "fixture" of the land on which it sits, as fixtures are outside of the new regime. This can sometimes be a difficult question for certain equipment, especially where they involve underground pipelines, wash plants and other buildings, as well as other major pieces of immovable equipment.

*Licences and authorities*

Under the new regime, licences and authorities that are not interests in land may be security interests which should be registered.

*Other common agreements caught*

Agreements such as "charges", "pledges", "farm in agreements", "royalty agreements", "equipment and supplies agreements", "off take agreements" and "product sale agreements" can all be caught and thought needs to be given if they should be registered.

*Confidentiality*

Under the PPSA, documents containing security interests over personal property need to be registered. The registers are public. Care should be taken to keep commercially sensitive information out of such documents.

**Automatic migration of some existing registered security interests**

Some existing registered security interests in personal property (such as the charges registered with the Australian Securities and Investments Commission) will automatically be "migrated across" to the new Personal Property Securities Register.

Some registers will not be automatically migrated across to the new Personal Property Securities Register.

Security against a mining or petroleum tenement (which does not fall within the definition of 'personal property' under the PPSA) will not be registered on the Personal Property Securities Register. All such security, including any security which has already been granted, should be registered on the relevant Mines Department register.

### **Obtaining and protecting a security interest in the case of insolvency**

There are very important steps which need to be taken to best protect a security interest over personal property in the event of an insolvency.

### **Reviews being undertaken**

Many Australian mining and energy companies are very busy at the moment reviewing how they will be affected by the PPSA and the new regime it introduces in October 2011.

They are busily checking all documents they have entered which deal with "personal property", all assets and types of arrangements affected by the PPSA and implementing new policies to ensure proper registration of interests in future.

### **Security interests granted in favour of Japanese companies**

Japanese companies need to also consider if it is necessary to register a security interest in an asset in Australia in Japan as well as in Australia.

---

This Client Briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. Clifford Chance assumes no responsibility for any situation arising from any act based on this Client Briefing. All rights reserved.

[www.cliffordchance.com](http://www.cliffordchance.com)

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh\* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\* Clifford Chance also has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh