

EXPLANATORY STATEMENT

Personal Property Securities (Migrated Security Interests and Effective Registration) Determination 2011

Summary

The *Personal Property Securities (Migrated Security Interests and Effective Registration) Determination 2011* (the determination) is made under sections 333 and 337 of the *Personal Property Securities Act 2009* (the Act) by the Personal Property Securities Registrar.

The determination under section 333 identifies the classes of personal property that are registrable by the Registrar on the Personal Property Securities Register (the PPS Register) during the migration time.

The determination under section 337 specifies registrations that are effective despite defects in data in the financing statement registered by the Registrar.

Background

An important element to the transitional provisions of the Act is the process of 'data migration' which involves the giving of data by an officer or agency of the Commonwealth, a State or a Territory in relation to personal property currently held in a transitional register maintained under a law of the Commonwealth, a State or a Territory to the Registrar.

In order for the data given to the Registrar to be registered on the PPS Register, the Registrar must determine that a class or classes of personal property are registrable. Section 4 of this determination identifies the two classes to be migrated.

Section 337 permits the Registrar to cure relevant defects arising from this data migration process for a limited period. A registration on the PPS Register would be ineffective because of a defect if, and only if, there is a seriously misleading defect in any data relating to the registration or there is a specified defect (sections 164 and 165).

Notes on Sections

Section 1 – Name of Determination

Section 1 provides for the citation of the Determination as the *Personal Property Securities (Migration Security Interests and Effective Registration) Determination 2011*.

Section 2 – Commencement

Paragraph 2(a) provides that sections 1 to 4 of the Determination commences on 28 November 2011.

Paragraph 2(b) provides that section 5 commences at the registration commencement time as defined by subsection 306(2) of the *Personal Property Securities Act 2009*.

Section 3 – Interpretation

This section provides that the definition of *Act* is the *Personal Property Securities Act 2009*.

Section 4 – Registration using migrated data – registrable personal property

This section determines that personal property that is prescribed under paragraph 148(c) of the Act and given to, and accepted by, the Registrar at or after the migration time, but before the registration commencement time is registrable for the purposes of subsection 333(1). Regulation 5.1 of the *Personal Property Securities Regulations 2010* states the relevant types of personal property prescribed by paragraph 148(c). These include impounded, immobilised or forfeited motor vehicles and personal property that is subject to an order of a court.

The second class of personal property that is determined to be registrable is personal property that is subject to a 'migrated security interest' as defined in section 332 of the Act. That provision requires that a registration in a transitional register in relation to the property was effective immediately before the data was given to the Registrar; that is, the registration was effective immediately before it was migrated from the transitional register.

The Act also requires that the registration in the transitional register be authorised by the law under which the register was maintained (paragraph 332(d)).

Section 5 - Registration effective despite defects

Under sections 164 and 165 of the Act, a defect may result in the registration being defective. This section identifies the class of registrations that will remain effective despite the existence of defects in the registration. A key policy intention behind the migration of data from transitional security registers to the PPS Register is to maintain the effectiveness of registrations that had been effective under the previous legislation applicable to the transitional security interest. For example, if a registrable

charge under the Corporations Act has been effectively registered under that Act and is migrated to the PPS Register, it can be expected to have the same priority as it would have had under the Corporations Act (sections 322 and 323 of the Act).

However, the determination recognises that some defects or omissions in data will inevitably result due to the migration process itself and that the specific data requirements for financing statements on the PPS Register set out in section 153 of the Act and Schedule 1 to the *Personal Property Securities Regulations 2010* may not be satisfied.

Accordingly, defects in registered data that would otherwise render the registration ineffective are made effective by this determination, but only for the periods specified in subsection 337(4) of the Act. This temporary period of effectiveness is intended to allow secured parties reasonable time to amend migrated registrations so that the data contained in the registrations are in accordance with the PPS legislative requirements. This is consistent with the use of transitional provisions under the Act in implementing the PPS reforms.

The determination, whilst ensuring the effectiveness of migrated registrations, is, nonetheless, subject to the rest of the Act. Therefore, though a registration may not be defective under sections 164 and 165, the absence of required data may have consequences under other provisions of the Act; for example, the provisions relating to the taking of personal property free of security interests (Part 2.5). Similarly, data registered with respect to personal property that is not in a class determined in section 4 of the Determination will not be made effective by section 5 (section 334 of the Act).

Consultation

Consultation with industry has been extensive involving the Department working closely with key stakeholders across the banking and finance sector. A trial of data migration and pre-load of certain transitional security interests was conducted in June and July 2011. During the trial, all data from existing registers was migrated, with the exception of the ASIC Register of Company Charges, and all data from pre-load participants was loaded into the production environment for the PPS Register. The trial also confirmed the amount of time required for data migration and pre-load. All transitional registers have advised that they are ready to commence data migration as scheduled. The Department also undertook an assessment of overall readiness for the commencement of PPS reform, including that of government as well as industry and other stakeholders.

Regulatory Impact Analysis

The Office of Best Practice Regulation has previously advised that the personal property securities reforms do not require a Regulatory Impact Statement because the reforms do not involve compulsion and it will be a commercial decision whether businesses register. It is not designed to impose any additional compliance costs on business or individuals or have any adverse impacts on competition.