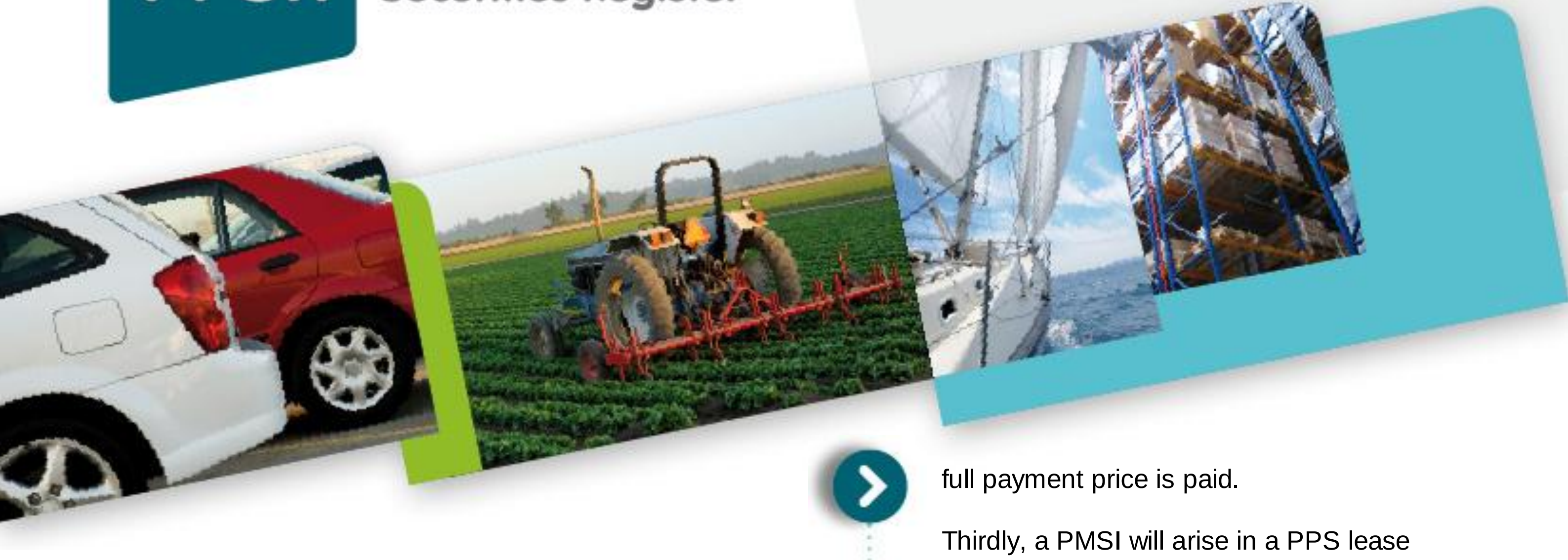
Australian Government

FACT SHEET

PPSR

Personal Property Securities Register



Purchase money security interests

DEFINITION

A purchase money security interest (PMSI) is a particular type of security interest. A PMSI is distinguished from a standard security interest in two main ways: its manner of creation and the priority it receives relative to other security interests in the same collateral.

A PMSI is a security interest in collateral that secures the assistance provided by the secured party to the grantor to enable their purchase or acquisition of rights in the collateral[1].

COMMERCIAL CONTEXT

A PMSI is likely to arise in four main scenarios.

Firstly, a PMSI will arise where funds are provided by a financer or other lender to a grantor for the purchase of the personal property. This is the most common transaction that gives rise to a PMSI and covers such transactions as purchases of motor vehicles where finance is provided at the point of sale.

Secondly, a PMSI will arise where the secured party has advanced personal property and all or part of the purchase price remains outstanding. The most common transactions in which this occurs are supply by retention of title clause. This typically involves the transfer of possession of collateral with title only passing after the full payment price is paid.

Thirdly, a PMSI will arise in a PPS lease transaction. A PPS lease is defined in the *Personal Property Securities Act 2009* (Cth) as a lease or bailment of for a term exceeding either three months in the case of motor vehicles, boats and aircraft, or one year for other types of personal property. Both financing leases and operational leases can fall within the definition of PPS lease.

Finally, a PMSI will arise in a consignment transaction.

PMSIs typically arise in commercial rather than consumer transactions. Other than where a motor vehicle is the collateral, a PMSI will not arise in property that the grantor intends to use for personal domestic or household purposes[2].

PMSIS AND PRIORITIES

A secured party with a PMSI may benefit from a ‘super-priority’ which defeats all other security interests in the collateral. This includes security interests created and registered before the PMSI[3]. Certain registration requirements must be complied with in order for the PMSI to benefit from the super-priority.

For example, ABC Pty Ltd grants an all-assets floating charge to Bankcorp Pty Ltd who duly registers this security interest. At a subsequent time, ABC Pty Ltd receives a supply of inventory on a retention of title basis from Supply-2 -U Pty Ltd which is also registered. ABC Pty Ltd subsequently becomes insolvent. The effect of the super-priority is that the PMSI held by Supply-2-U Pty Ltd defeats the security interest of Bankcorp Pty Ltd.

The rationale for this priority rule is that the earlier secured party should not benefit by having recourse to assets of the grantor that would not have been acquired other than with the assistance of the subsequent financier. If the subsequent PMSI secured party did not have the super-priority, they may not have advanced the money or assistance necessary for the grantor to acquire the collateral and develop their business further.

An exception to the PMSI super-priority operates in the context of inventory financing. In this case a PMSI in accounts as proceeds[4] of a supply of inventory is defeated by a deemed security interest[5] in those accounts arising from a factors purchase of those accounts.

REGISTRATION REQUIREMENTS

To receive a super-priority, a PMSI must be registered within specific timeframes. These vary according to the type of personal property and its intended use by the grantor. These timeframes are as follows:

Collateral that is tangible and intangible and it's treatment where that collateral is inventory or not inventory		
	Where the collateral is tangible property	**Where the collateral is intangible property**
Where the collateral is inventory:	The security interest must be registered before the time the grantor obtains possession of the collateral.	The security interest must be registered before the time the PMSI attaches, or is created, over the inventory.
Where the collateral is not inventory:	The security interest must be registered within 15 business days of the grantor obtaining possession of the collateral.	The security interest must be registered within 15 business days of the grantor obtaining possession of the time of attachment, or creation, of the PMSI.

A PMSI that is not registered within these timeframes is still validly created however will not benefit from the PMSI super-priority. The secured party continues to have a security interest and the default priority rules apply[6].

The registration process will be neither expensive nor complicated and will be supported by the ITSA National Service Centre to assist users.

ONGOING SUPPLY ARRANGEMENTS

It is common in commercial practice for a supplier to make repeated supplies of property to the same receiver. These supplies are commonly made on the same terms.

In these cases the secured party only needs to make a single registration against the recipient. They do not need to make a registration for each supply advanced. This is because a single registration is valid for one or more security interests.

NOTES

1. Section 14(1), PPS Act
2. Section 14(2)(c), PPS Act
3. Section 63, PPS Act
4. Section 31, PPS Act
5. See section 62, PPS Act
6. Section 55, PPS Act

Please note: This fact sheet provides general information about PPS reform and does not constitute legal advice. You should seek legal or other professional advice to consider the application of the PPS Act to your individual circumstances.