

Personal Property Securities and Investment in New Zealand

In New Zealand the Personal Property Securities Act 1999 (PPSA) (which is similar to regimes currently operating in the US and Canada and that which recently received royal assent in Australia) governs the creation and enforcement of security interests over personal property.

The PPSA largely regulates the priority of competing security interests in the same personal property and, generally speaking, under the PPSA security interests which are “perfected” (in that they have “attached” (through the existence of a valid security agreement) and have been registered on New Zealand’s Personal Property Securities Register) have priority over subsequently perfected security interests and other unperfected competing securities.

For the purposes of the PPSA, “personal property” includes almost all property other than land (and includes chattel paper, documents of title, intangibles (e.g. intellectual property), investment securities (e.g. shares) and negotiable instruments) and a “security interest” is an interest created or provided for by a transaction which in substance secures payment or performance of an obligation. Under the PPSA certain other transactions are also deemed “security interests” (e.g. leases of goods for a term of more than one year).

The PPSA affects anyone who deals with personal property in New Zealand. Those making new investments in New Zealand will need to consider its effects when purchasing personal property as part of a business asset purchase. Others with investments in New Zealand who also need to consider the effects of the PPSA are financiers and borrowers and suppliers of goods and services.

For further information please contact:



Geoff Hosking
Tel: +64 9 375 8693
geoff.hosking@heskethenry.co.nz



Chris Tompkins
Tel: +64 9 375 8742
christopher.tompkins@heskethenry.co.nz



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www.heskethenry.co.nz