

**Milbank**

# Client Alert

BEIJING FRANKFURT HONG KONG LONDON LOS ANGELES MUNICH NEW YORK SÃO PAULO SINGAPORE TOKYO WASHINGTON, DC

## AUSTRALIA ENACTS NEW PERSONAL PROPERTY SECURITIES ACT

The Australian Personal Property Securities Act 2009 (the “PPSA”), and its accompanying Personal Property Securities Register (“PPSR”) are due to come into force in early 2012, replacing more than 70 existing national, state and territory laws. The PPSA fundamentally changes the rules governing security interests in personal property in Australia by adopting a system similar to those in place in the U.S., Canada and New Zealand.

The PPSA establishes new rules for creating valid and enforceable security interests in Australia. It will also establish the PPSR, a new central register for the registration of security interests in respect of personal property. The PPSA will allow for registration on the PPSR of a broader range of interests in many more types of property than are currently capable of registration on existing registers.

Investors currently holding outstanding debt investments secured by pledges of interests in the personal property of Australian entities should consider contacting issuers and trustees of such debt, as applicable, to ensure that those security interests remain valid, and retain their current priority after the new law takes effect. Investors will want to receive confirmation that existing security interests that have been registered have been, or will be, migrated to the PPSR, and that interests that have not previously required registration will not need to be registered under the PPSA (or if registration of such interests is now required, that steps have been, or will be, taken to register such interests). What follows is a brief overview of issues that will be of interest to investors as Australia transitions to the new law.

### (i) Types of Interests Covered:

The PPSA applies to any security interest in personal property, and focuses on substance over form. What were previously known as “Fixed” and “Floating” charges will now be called security interests over “Non-circulating” and “Circulating” assets, respectively. Secured parties’ rights in these assets will not change when the PPSA takes effect.

For further information about this Client Alert, please contact:

Elizabeth Besio Hardin  
Partner  
Milbank  
+1-212-530-5037  
ehardin@milbank.com

Nick Robinson  
Associate  
Milbank  
+1-212-530-5665  
nrobinson@milbank.com

Michael Dodge  
Partner  
Arnold Bloch Leibler  
+61-3-9229-9649  
mdodge@abl.com.au

This Client Alert is a source of general information for clients and friends of Milbank, Tweed, Hadley & McCloy LLP. Its content should not be construed as legal advice, and readers should not act upon the information in this Client Alert without consulting counsel. © 2011, Milbank, Tweed, Hadley & McCloy LLP. All rights reserved.

Attorney Advertising, prior results do not guarantee a similar outcome.

November 16, 2011

---

(ii) Registration of Security Interests:

Under the PPSA, most security interests in personal property must be registered on the PPSR. The PPSR will be computer-based, updated in real time, and accessible to the public. Registration will be effective upon the filing of a financing statement that contains the names of the parties to the transaction and a description of the collateral being pledged as security. The existence of the PPSR removes the need for holders of security interests to research and meet the requirements of various jurisdictions in order to protect their interests.

More than 20 existing registers (but not all registers) will be automatically migrated to the new PPSR when it is launched. Interests not migrated and those that previously have not been required to be registered will receive temporary perfection for 24 months after the PPSR is launched. During this “transitional period”, secured parties will retain the priority they had before the PPSR was active. Failure to register a pre-existing security interest prior to the end of the transitional period may result in that secured party losing its priority to another secured party that registers during this time. It is therefore important that investors in secured notes issued by Australian companies ascertain from the relevant issuer or trustee whether all applicable registrations have been made.

A financing statement filed on the PPSR is effective for seven years for consumer property, or property identifiable by serial number, unless an earlier end date for the registration is specified. For commercial property, parties can specify the length of time up to 25 years or indefinitely. Financing statements can be renewed if the renewal is filed before expiration of the original statement. Statements can be discharged for free when a debt has been repaid.

(iii) Enforcement of Security Interests:

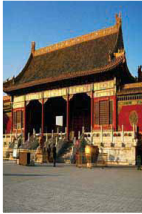
The PPSA moves away from enforcement based on common law and equity principles and contains enforcement provisions that make the ability to collect on collateral statute-based. These new enforcement rules will apply only to security interests created on or after the date that the new registration rules take effect. For security interests existing before the enactment of the PPSA, the enforcement rules in effect at the time of entering into the security agreement will apply.

## WORLDWIDE OFFICES



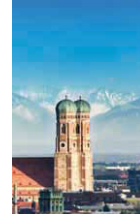
### **New York**

One Chase Manhattan Plaza  
New York, NY 10005  
+1-212-530-5000



### **Beijing**

Units 05-06, 15th Floor, Tower 2  
China Central Place  
79 Jianguo Road, Chaoyang District  
Beijing 100025, China  
+8610-5969-2700



### **Munich**

Maximilianstrasse 15  
(Maximilianhoefe)  
80539 Munich  
Germany  
+49-89-25559-3600



### **Frankfurt**

Taunusanlage 15  
60325 Frankfurt am Main  
Germany  
+49-69-71914-3400



### **São Paulo**

Rua Colombia, 325  
Jardim América  
São Paulo, 01438-000  
Brazil  
+55-11-3927-7701



### **Hong Kong**

3007 Alexandra House  
18 Chater Road  
Central, Hong Kong  
+852-2971-4888



### **Singapore**

30 Raffles Place  
#14-00 Chevron House  
Singapore 048622  
+65-6428-2400



### **London**

10 Gresham Street  
London EC2V 7JD  
England  
+44-20-7615-3000



### **Tokyo**

21F Midtown Tower  
9-7-1 Akasaka  
Minato-ku, Tokyo 107-6221  
Japan  
+813-5410-2801



### **Los Angeles**

601 South Figueroa Street  
30th Floor  
Los Angeles, CA 90017  
+1-213-892-4000



### **Washington, DC**

International Square Building  
1850 K Street, NW  
Suite 1100  
Washington, DC 20006  
+1-202-835-7500