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Personal Property Securities Register and the Wine Industry

The PPSR is a single National Register, established to record security interests over personal property. The aim of the PPSR is to allow businesses greater scope to use personal property to raise funds.

If you do not register a security interest, it can lead to some cruel consequences particularly in regards to retention of title and leasing arrangements. The way to protect against these outcomes is a Purchase Money Security Interest (PMSI). PMSI registrations assert your interest in the goods even though you do not have possession and protect you if the person in possession of your goods becomes bankrupt or insolvent.

PMSI registrations take priority over other competing security interests.

A Vineyard Case Study

John's company owns a vineyard which is managed by ABC Consultants ("the wine manager"). The vineyard produces a chardonnay blended with grapes from neighbouring growers.

ABC Consultants manage all of the winemaking operations. When the wines are sold, ABC Consultants retain a percentage of the profits less the John's company's share.

When the planned restaurant development stalls, the company falls behind on its loans and is put into liquidation. The Bank has secured its interests by way of mortgage on the real estate assets and broad PPSR registrations on the assets of the business. The bank repossesses the vineyard and most of the business assets, the liquidator sells off the rest.

What happens to the wine manager's equipment?

All equipment at the vineyard at the time of liquidation is at serious risk of being called upon to pay the vineyard owner's debts.

If the wine manager's equipment is deemed to have been a PPS Lease, it will be treated as an asset of the vineyard. The bank or the liquidator will be entitled to sell the equipment. Either way, it will be very difficult for the wine manager to recover its equipment. A PPS lease is for a period exceeding 12 months for an indefinite term. Whether the equipment is a PPS lease will depend on the wine manager's business model.

The wine manager's only recourse in this situation is as an unsecured creditor.

However if an appropriate PMSI has been registered, it would take priority over the Bank even if the bank lodged its general security interest first. The wine manager's equipment would also be quarantined from the insolvency and can be recovered by the wine manager.

What rights does the wine manager have in the grapes and the wine?

Without a PPSR registration, the wine manager has no rights in the grapes or the wine and has lost its right to profits. It can sue the vineyard owner, but only as an unsecured creditor.



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Conversely, with a PPSR registration over the crops and the harvested produce from the crop (i.e. wine), the wine manager would have some protection for their interest in the crop. It is important to note however that pre-existing leases and mortgages take priority over security interests in crops unless the lessor or mortgagee consent.

What happens to the grapes from other growers?

All grapes from other growers at the vineyard at the time of liquidation may be called upon to pay the vineyard owner's debts even if the grower has not been paid for the grapes.

However if an appropriate PMSI has been registered by the grower, it would take priority over the Bank and the grapes would also be quarantined from the insolvency.

A security interest between the vineyard and the grower does not need to be registered each time the grower supplies grapes. One security interest registration can be used to protect all grapes supplied by the grower over the course of an agreement with the vineyard.



What should we do about it?

These examples highlight the importance of entering into written agreements with vineyard owners that allow for the registration of appropriate PPSR security interests.

Where can I find out more?

For more information please contact Accredited Business Law Specialist and Partner **Adrian Riccioni** or his team **Siew Goh** and **Stephanie Rendell**. Adrian works exclusively in commercial law, business law and estate planning. Adrian is a local to the Yarra Valley and is on the committee of the Yarra Valley Wine Grower's Association.

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