Personal Property Security Act and Registry

Overview of Reform

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Introduction

The Memorandum is provided as an introduction to the Personal Property Securities Act 2011 (PPSA) reform project for Papua New Guinea. It is intended to provide background information on the reform to assist the public in understanding how the PPSA works from both a legal and a practical perspective.

The reform has been overseen by the Papua New Guinea Department of the Treasury, with assistance from the Private Sector Development Initiative, Asian Development Bank. The PPSA was passed in 2011 and will commence in early January 2016.

1. Summary of the Reform

The purpose of the PPSA reform is to promote commerce. It does so by providing a legal framework that makes it easier to pledge <u>movable</u> property to stand good for loans. If securing loans with collateral is easier, less expensive, and more reliable in terms of enforcement, more people will have the opportunity to participate in commerce and the economy will grow. This is a powerful reform where many citizens do not have land holdings that can be pledged as collateral

Today in PNG secured lending relies on a variety of technical legal forms. Each form has its own legal rules on creating and enforcing security rights in collateral. The rules are not uniform, and expensive consequences may follow from selecting the incorrect form. The PPSA will do away with these varies legal forms and consolidate all lending against movable property under one law. Further, today in PNG it is not easy to learn if any particular property has already been pledged to stand good for a loan. If a lender has a charge over a company's assets then the Company Registry office will contain a record of the transaction, but these documents are not also is an easily-searchable format. Loans to individuals based upon a pledge of movable property are even harder to research under the Instruments Act.

The PPSA will change current practices. After commencement of the Act and the online registry, no longer will there be any company charges filed with the company registry office. Further, both the old Instruments Act and the Hire-Purchase Act will also be repealed as of commencement of the PPSA. Instead, **notices of all charges over moveable property will be filed in a purely online registry**. This means that registrations can be done from the lender's own office without the need to physically visit the IPA. It also means that registrations will be completed in real-time, so there will be no delays in securing one's priority position in collateral that has been charged. Finally, the PPSA registry will be searchable online in real time, allowing lenders to immediately assess whether someone seeking a loan has already pledged their collateral to another party.

This Summary does discuss certain legal concepts and possible outcomes under the PPSA. While this Summary seeks to provide general guidance to users of the PPSA, this Summary should not be taken as providing any legal advice for any specific situation. Every transaction is different with its own facts, and if you have any questions you should consult your own solicitors for legal advice.

2. Specifics of the Reform

The following are some of the key details regarding how the reform works.

A. Type of movable property subject to the reform

Movable property is defined broadly, and can include not only tangible things such as inventory and equipment, but also intangible property, like accounts receivable, other rights to payment, and even property to be acquired in the future. This allows a lender to take a charge (called a "security interest" under the PPSA) in "all inventory and the proceeds of its sale," for example, which allows for revolving credit for goods which are continually coming in and out the door of an ongoing business. The intent of the PPSA is to be applied as broadly as possible, covering a variety of types of property and transactions. However, it is crucial to note that the Act does not apply to land (immovable property).

There are some narrow exceptions drawn as to what sits outside the scope of the PPSA. For example, pledges of salary or wages or of superannuation fund payment, and interests in mining tenements or gas licences are excluded. There are also special rules concerning household items like refrigerators that effectively prohibit taking a charge over these assets to stand good for a business loan. This rule is intended to protect households from losing out if a family business goes bad.

B. Who may pledge movable property as collateral?

There is no limitation under the PPSA on who may use movable property as collateral. So long as a person or business has rights in the property and the ability to enter into a contract, that person or entity may pledge the property as collateral. Thus, the PPSA will assist not only businesses but also individual citizens who are seeking credit by pledging their movable assets.

C. What are security interests? How are security interests created?

Under the PPSA, a "security interest" is merely the term used for the charge or mortgage over the movable property that secures the promise to pay back a loan. The granting of the security interest creates a property right in the movable property in favour of the lender that can be acted upon in the event of default.

A security interest is granted by a borrower (called the "debtor" under the PPSA) under a "security agreement." In the typical borrower-lender transaction, the standard loan documents just are the security agreement: there is no special contract form set out in the PPSA and the parties are free to draw up their own agreement. The security agreement need only be signed by the debtor and describe the collateral to be effective under the PPSA. All other formal terms and conditions are left to the parties to decide upon.

D. What is the PPSA online register?

Once the security interest is granted by the debtor, then the secured party records a "notice of security interest" into a centralized electronic registry. This registry holds information about the property pledged and the name of the debtor. It does not, however, require any financial information about the loan itself (such as the amount of the debt) as this is deemed confidential. Only enough information is to be supplied by the secured party to identify the movable property subject to the charge.

This registry itself is purely online: there will no longer be any need to front up at a government agency to submit paper filings. All data entry for all filings is completed by the lender and can be accomplished from your own office. Compare this to the current situation where a lender takes a pledge of a company's assets. Under the current Companies Act the lender is required to take the actual loan documents to the IPA and have the entire package filed. This is both time-consuming and inefficient. This will no longer be required once the PPSA register is online: the actual loan documents will not be part of the registry.

In order to submit filings to the registry you will need to be a registered client. Registration is completed through the website and is free. To register, visit the PPSA online registry site, find the "How to…" tab on the home page, then click on the link called "Set up a client account." There you will find instruction on how to become a client so that you can register your charges in the online registry.

The registry is open to the public for searchers so that others may determine whether property has previously been pledged to secure a previous loan. Searchers do not have to be clients of the registry, only the filers. Lenders will search this registry as part of their due diligence when assessing whether to make a loan or not. The ability to perform this sort of search against a would-be borrower results in lenders feeling more confident about extending credit, knowing that the collateral for their loan has not been previously pledged. Searching the registry is free and is open to anyone. All that a person needs is an internet connection or access via a mobile phone.

Note that the Act does not establish a general property registration system. *Only movable property that has been pledged as collateral to stand good for a loan (or other obligation) is covered by a PPSA*.

E. What is filed in the online registry?

The PPSA does not require that the full set of loan documents be filed. This is a change from the way the Company Charge registry works where a stack of papers must be filed in order for a lender to protect its interests. Instead, the basic concept is that the PPSA registry will collect only enough information to give notice to a searcher that a particular debtor and particular moveable property may be subject to a charge. So, debtor name and address, a description of the collateral, and the lender's name and address are all that is required. With regard to "debtor name," for companies and other incorporated entities (like Associations) the key data element is their **company registration number** issued by IPA.

In most cases a general description of the collateral is sufficient. For example, a Notice stating that "all inventory and accounts receivable now or hereafter in the future held by Company ABC is subject to this security interest" would be sufficient. On the other hand, the lender may be very precise in describing particular collateral, like including serial numbers for equipment or even uploading pictures (common with jewelry or art). Note: a special rule applies if a lender is taking a charge over a specific motor vehicle. In this case the VIN (chassis number) must be included in a special field in the registry. This will make it easy for searchers to later learn if a car is subject to a charge as VIN is a searchable field.

The registry website contains a user manual on how to use its features. It is intuitive and easy to use. If there are any questions there is a tech support contact email, and responses are almost always provided within 24 hours.

F. Can the online registry help buyers of movable property and not just lenders?

One of the great benefits of the PPSA online registry is that it also helps buyers of movable property as buyers may also search the registry to determine if the item they seek to own is subject to a charge. This is extremely helpful to everyone. Consider the situation if a person would like to buy a car from their neighbor. Currently in PNG it is difficult to determine if the owner of the car has already pledged it to another to stand good for a loan. Under the PPSA all charges over cars must be filed into this registry to be effective against buyers. The key data field to search in the VIN (chassis number) of the car.

G. What transactions are covered by the PPSA?

While it is obvious that the PPSA applies to a traditional borrower-lender transaction, it will apply to other business deals as well. This is because of the broad language in which a PPSA is written. The text of the Act does not refer to "lenders" or "borrowers," but rather to "secured parties" and "debtors." Thus, an equipment dealer that sells a bulldozer on credit is a "secured party" and the buyer is a "debtor." In this case, the debtor would have given a "security interest" in the bulldozer in favour of the secured party, the seller.

In other jurisdictions where this reform has long been in place imaginative business-people have created financing products for specific situations. For example, seed suppliers have financed the sale of their product and in return taken a security interest in the crops to be harvested. Various trade creditors may use the Act in ways to foster supply-chain financing. Contractors with large accounts receivables from trustworthy payors may be able to pledge these receivables to obtain short-term financing so as to meet payroll. A PPSA is flexible enough to cover a variety of situations.

The PPSA will also apply to transactions that are sometimes thought to sit outside the traditional lender-borrower relationship. The following is a discussion of two of the most common of these transactions, title retention and operating lease financing:

<u>Title retention</u>

Title retention is a term that describes a number of legal forms that share the same basic structure: a seller of goods retains ownership of the goods until the full purchase price is paid. When the buyer makes the last payment, the seller transfers ownership of the goods to the buyer. If he buyer stops making payments, the seller may take back the goods on the ground that the seller is entitled to take back what is rightfully theirs as title has not yet transferred. Variations on this theme include things that are sometimes called hire-purchase, conditional sale, sale with retention of title, and finance leasing.

In reality title retention devices are merely crafty legal constructs that aim to avoid the burdens of stamp duty and registration under the bills of sale law (in PNG, the *Instruments Act*). By including title retention schemes under the PPSA, the law merely restores what ought to have been the natural order before creative lawyering fashioned a non-transparent way of avoiding other laws. This also provides much greater transparency to the lending community regarding the legal status of assets held by would-be borrowers.

Suppose today that a person possesses two identical and valuable assets. One is financed under a registered bill of sale; the other is purchased on credit under a title-retention scheme. Now suppose the person offers both assets to a prospective creditor as collateral for a loan. Under current law, the status of the asset registered under the *Instruments Act* is discoverable (through the Bill of Sale Registry), while the status of the asset subject to the title-retention agreement is not discoverable. The PPSA would continue this undesirable result if title retention were excluded from the scope of the Act. Under the PPSA, both creditors must register to protect their interests no matter who technically holds title to the assets. This ensures that any prospective creditor will discover the status of both assets upon searching the registry.

Title retention is within the scope of modern secured lending legislation in all of the U.S. states, all of the common law Canadian provinces, and in New Zealand, Australia, Vanuatu, Solomon Islands, Tonga, and other jurisdictions as well. The inclusion of title retention within the scope of secured lending reform in PNG is also consistent with recommendation from all international organizations concerned with best practices in PPSA reforms.

Operating leases

Under an operating lease, lessors expect that a leased asset will have residual economic value at the end of the lease. Unlike finance lessors, operational lessors expect to be able to use that residual value as they wish – they may keep the asset, lease it again, or sell it.

Similar to the above illustration, suppose that a person has two valuable and identical assets. One is financed under a fixed charge, registered in the Companies Registry; the other is leased under an operating lease. Now suppose the person offers both assets to a prospective creditor as collateral for a loan. Under current law, the status of the asset subject to the company charge is discoverable, while the status of the asset subject to the operating lease is not discoverable. Under the PPSA, both creditors must register to protect their interests no matter who holds title to the assets. This allows a prospective creditor to discover the status of both assets upon searching the registry.

Note that unlike title retention, the operating lease is subject to the PPSA only for the purposes of registration and priority. The operating lease is not subject to the enforcement provisions of the PPSA because these provisions may interfere with the lessor's expectations with respect to the residual value of the asset.

Operating leases are within the scope of PPSAs in the common law provinces of Canada, New Zealand, Australia, Vanuatu, Solomon Islands, and other jurisdictions. Operating leases are not within the scope of the law in the United States. The American approach has led to considerable litigation between creditors who dispute whether an agreement styled as an operating lease is, in fact, a finance lease. To avoid repeating the sorts of disputes that have arisen in the United States, and to be consistent with the law in neighboring countries, PNG has included operating leases within the scope of the PPSA, but only for the purposes of registration and priority and not for the purposes of enforcement.

H. Does the Act dictate what must be in the security agreement?

The Act does not intrude into the business arrangement to be stuck between the parties. The parties to the transaction are free to set the terms of their underlying deal as they see fit, including the payment terms, designation of the collateral and the definition of default. The PPSA does not set out the terms of that private agreement.

I. Establishing "Priority" in collateral

A key component of a PPSA pertains to establishing "priority" in collateral. Priority is a term that refers to determining which person has the best claim to collateral in case the borrower goes into default. A person with priority has first rights in the collateral. Priority is a critical issue when more than one creditor has a claim on the debtor's collateral. The secured party with priority is able to seize the collateral and obtain its full value before any other creditor is able to obtain any value from it.

The PPSA sets out clear rules for determining priority in the collateral among competing creditor claims on that collateral. In practice, by far the most common method of establishing priority in collateral is through filing a "Notice" of security interest in the central electronic registry established under the Act. The basic rule is then this: ***the first creditor to file has priority in the collateral***.

Note that filing a Notice is not the only means of establishing priority, and the PPSA spells out a few limited situations where priority can be established by other means, such as by possession of the collateral. This is especially important with regard to deposit accounts, where a bank that holds the account automatically has priority in the cash in the account without having to make a filing in the registry. There is a further discussion about deposit accounts below in Section 5 of this Summary.

J. How does a creditor's priority in collateral impact buyers of that same collateral?

Priority is extremely important as creditors that can establish their superior rights in the collateral will then feel secure that no other creditors can jump ahead of them in the event of a default. It is also a very important concept with regard to buyers of moveable property. The general rule is that if a person buys property that a creditor has priority over, then the buyer takes the property subject to that prior interest. In other words, if there is a prior security interest, that secured party (the lender) may later seize the property that was purchased to pay off the seller's debt.

This may seem a harsh rule, but it is the only one that makes sense in the commercial world. If the law were to allow a simple sale to extinguish rights in collateral, then shady borrowers would simply sell their assets to their friends, thus defeating any attempt by lenders to obtain the collateral. Further, once the PPSA registry is in place, buyers can protect themselves by simply conducting a search of the registry to see if the collateral has already been pledged.

Importantly, this "buyer beware" rule does not apply to all sale transactions. One of the biggest exceptions involve what are called "sales in the ordinary course of business." An example will best illustrate this exception. Say a borrower is a grocery store business. Their lender has a security interest in all of the inventory of the store. Obviously the store is selling inventory each day. Buyers of that inventory, the customers of the store, take their goods free of the security interest as these goods were purchased "in the ordinary course of business." In this case, the lender's security interest in the inventory automatically converts to a security interest in the proceeds of the sales, in other words, the cash. It would not make commercial sense in this case to allow a lender to chase after groceries sold to families. This allows commerce to flow without any interruption.

K. Are motor vehicles included in the PPSA? How does this affect lenders and buyers of motor vehicles?

Special rules apply for motor vehicles. The reason why is because cars are bought and sold in high numbers each day both from car dealers and from individuals. The following is a summary of the PPSA as it applies to motor vehicle transactions.

Lending to and buying from an individual car owner

If a lender is financing the purchase of an individual car, that lender would file a Notice in the registry that includes not only the debtor name but also the VIN of the car. If a person was considering buying a car from an individual, the buyer must check the registry to see if any charge is associated with that VIN. *If a buyer purchases a car from a non-dealer that has a Notice filed against it the buyer takes that car subject to the charge*. The reason why is because an individual selling a car is not a "seller in the ordinary course of business." Searches of the registry are free and can be done in real time by anyone with an internet connection.

Lending to and buying from a car dealer

If a lender is financing a car dealership, the cars held on the lot are "inventory" and the lender need not register the VIN of each car on the lot. Indeed, this would not be practical as cars are always coming-and-going off the lot each day. Instead, as cars are sold the lender's charge automatically attaches to the proceeds of the sale.

If a person buys a car from a car dealer they are deemed to be "buyers in the ordinary course of business" and take the car free of any general charge over the inventory of the car dealer.

L. Enforcement

The PPSA establishes the process for enforcement against the collateral in the event of default by the debtor. The PPSA provides precise rules on how lenders are to proceed depending upon the type of collateral that has been pledged. The PPSA also provides rules regarding how the collateral is to be sold after it has been repossessed. Finally, the PPSA sets out the distribution scheme according to the relative priorities of parties in the collateral.

3. Case Scenario: Synopsis of a typical loan transaction under the PPSA

In a typical situation under the PPSA, a going business (debtor) visits a lender (secured party) to apply for a loan for the business. The debtor may offer the secured party a security interest in its business equipment, its inventory and accounts receivable. The lender searches the records of the electronic registry via the internet to see whether the assets being offered as collateral are subject to a prior security interest. If there is no prior notice of a security interest in registry for this debtor and/or this collateral, the secured party can then enter the agreement with the debtor with confidence of its priority in the collateral against other lenders. Just prior to disbursing the loan proceeds the lender would again check the registry to make sure nothing has changed, file its own Notice, then disburse the funds. A lender should always submit its Notice to the registry prior to or at the same time it hands over the loan funds.

If the potential lender finds in its search that a notice of security interest in the collateral has already been filed by another person, it has several options. The potential lender may contact the prior secured party to determine if the existing obligation is small enough that there is sufficient excess value in the collateral to secure the loan, and then file its own notice of security interest (in this case, the second-to-file would have secondary priority in the collateral). Conversely, the potential lender may try to secure an agreement with the prior secured party to subordinate the prior interest to the current secured party's security interest, and then file a notice. Or the secured party may seek other collateral or simply decide not to lend because the risk of the prior security interest is too great. In all cases this is a business decision to be made by the second lender and is not dictated by the PPSA.

As can be seen from this example, implementation of the Act will not relieve secured parties of the need to exercise standard due diligence measures such as checking the credit-worthiness of the debtor, examining business plans for viability and ensuring the debtor has sufficient cash-flow to make repayment possible. The PPSA and its registry will simply provide a means to search to check a debtor's status, secure an obligation with assets and to ensure the secured party's priority in them.

4. The Transition Period

There are pre-existing transactions that will now fall within the PPSA, and those existing transactions must be migrated into the PPSA registry in a fair way so as not to affect the rights of the parties to these earlier transactions. The transition rules permit a lender in a prior transaction to file a Notice of that prior transaction in the registry within 180 days. If a secured party in a prior secured transaction files a Notice within this 180 day transition period, that Notice will establish the lender's priority as of the effective date of the law. There are two legal conclusions that flow from filing a pre-existing transaction in the registry within the first 180 days:

1) All notices for pre-existing transactions are treated as if they were filed on Day 1 that the registry commences, so there is no difference if they are filed on Day 3 or Day 133. So long as they are filed in the first 180 days, the PPSA treats them the same.

2) All notices for pre-existing transactions that are filed within the first 180 days will maintain the same priority in the collateral as existed under the prior law. It would be unfair to upset prior contract rights with a new law, and the PPSA does not do so.

If Notice for a pre-existing transaction is filed after the 180 transition period, priority will date from the date of filing and will not relate back-in-time to the date the original loan was made. Thus, it is strongly recommended that all entities that hold a pre-existing security interest in moveable collateral should register them in the new PPSA register within 180 days from commencement.

5. Detailed rules for specific asset types under the PNG PPSA

This section 5 talks about some specialized rules for certain asset classes. Most loans will not require in-depth knowledge of these special rules, but it is appropriate to include this discussion here to alert users of these issues.

The first step in analyzing any issue under the PPSA is to determine what class of collateral is at issue. Generally this is very straightforward: the collateral is usually either equipment, inventory, a motor vehicle, or in the case of a general charge over all assets of a business, the broad collateral category of "all moveable assets now owned or ever acquired in the future by the debtor." In these cases filing a Notice in the registry will protect a lender's interests, and the first to file will have priority in the collateral. However, occasionally more unusual collateral is offered, and in these cases special rules may apply. The following is a summary of some of the other collateral types covered by the PPSA.

Deposit Accounts

A deposit account is a money account (checking, savings, time deposit, etc.) maintained in a financial institution. In many cases, a deposit account is the only security for a consumer loan in PNG. If registration was required to protect the interests of financial institutions over deposit accounts, there would literally be tens of thousands of filings necessary to make this happen. This is impractical. Therefore, under the PPSA any person that has "control" of a deposit account gains automatic priority in the cash held in the account. Under Section 65 of the PPSA the person that has control over the deposit account has priority over other creditors who may have merely registered notices of security interests in the deposit account.

Section 3 of the PPSA provides the methods for taking control. It first states the general rule that the deposit-taking institution has control over the accounts it holds. However, 3rd parties, such as other lenders (like finance companies that don't take deposits) can gain control over a deposit account if they have an agreement with the deposit account holder—the bank—to this effect or if they become the customer of the deposit holder. For example, assume Finance Company has a charge over all inventory of Business, and Business deposits its sale proceeds each day with Bank. Normally Bank would have control over this account and therefore have priority in the cash. However, Finance Company could enter into an agreement under which Bank recognizes that Finance Company has control over the account. Similarly, Finance Company could open the account in its own name and require Business to deposit the funds into Finance Company's account.

Fixtures

A fixture is a good that becomes attached to real property in a manner that causes real property law to apply to it. For example, under the common law of most countries, when lifts are installed in buildings, real property law (including mortgage law) applies to the lifts. When generators, air conditioners, and light fixtures are installed in buildings, real property will most likely apply to them. When office machines are attached to floors or picture hangers are attached to walls, real property law may or may not apply to them.

Section 68 of the PPSA provides two narrow circumstances in which a PPSA lender with a charge over a good that becomes a fixture may gain priority in that good over a pre-existing land mortgage holder. The first exception has to do with consumer appliances, office machines, and certain other equipment that are <u>readily removable</u> from the real property. A creditor with a prior registered security interest in these goods has priority over a mortgagee who may claim a right to them on the basis of a mortgage that covers the real property where the goods are installed.

The second exception has to do with a lender who extends credit for the purchase of specific goods that become fixtures – a "purchase-money creditor". For example, a finance company that lends money to a business to buy a generator is a purchase-money creditor. The purchase-money creditor has priority in the generator over a mortgagee's interest the generator.

Section 69 sets out the rules on how a secured party with priority in a fixture may proceed to recover the fixture from the land on which it sits. Importantly, the removal of the good must not cause any unreasonable damage, and a land mortgage holder would be able to be reimbursed for any such damages.

<u>Registration of interests in fixtures</u>

As explained above, the PPSA applies to goods that become fixtures. A prospective purchaser of real property has a strong interest in discovering existing security interests in fixtures. Security interests in fixtures, therefore, must be registered to provide notice to prospective purchasers.

Registration in a traditional PPSA registry is not as helpful to a prospective purchaser of real property because PPSA records are indexed by the name of the debtor. The prospective purchaser of real property needs to search records that are indexed by identification of the relevant real property. Therefore, in much of the world PPSAs typically require that notices of security interests in fixtures be registered in real property registries.

The problem with this approach in PNG is that the land registry system is inefficient for use by fixture financiers. The cost and delay of registration of a notice of a security interest in the land records would likely be too great to justify, defeating the purpose of the PPSA's rules on fixture financing. Efficient searches of the land registry records are also a challenge.

The PPSA's response to these obstacles is to permit registration in the PPSA registry of a notice of a security interest in fixtures that identifies the relevant real property by its real property identification number – the number that would be used to register a mortgage on the real property at the land registry. This amounts to a Volume and Folio number and there is a special field within the PPSA registry that will collect this information. The PPSA register will index notices that contain a real property identification number by that number. The index will allow prospective purchasers of real property to search for the real estate, rather than the name of the debtor. Prospective purchasers of real property will take the property free of any security interest in fixtures if the real property identification number is not contained in a registered notice in the PPSA registry.

Landlord's liens

A practice among real property owners in PNG is to seize personal property of defaulting renters and hold the property to secure payment of rents, without taking a security interest in the personal property in advance of seizure. Evidently, courts recognize this practice under the name of a "landlord's lien." The practice would have the effect of diluting secured creditor rights under the PPSA.

To eliminate this risk, the definition of "execution creditor" includes the holder of a landlord's lien. The effect is that a landlord's priority in a renter's personal property will depend, against competing secured creditors, on the date of the landlord's notice which must be registered in the PPSA registry.

Superannuation funds

The PPSA excludes from its scope any security interest in a superannuation fund. Section 11(1)(g). As a matter of policy it is not appropriate to allow for the easy pledging of such funds in light of the risk that future payments, needed in retirement, may not be available when needed.

Exclusions for mining tenements and petroleum licenses

Existing PNG law governs the creation and transfer of security interests in mining tenements (*Mining Act 1992*) and petroleum licenses (*Oil and Gas Act 1998*). During consultations on the PPSA Bill Treasury determined that unwarranted disruption of business may result if mining tenements and petroleum licenses were made subject to the PPSA. Therefore, Section 11 of the PPSA excludes any security interest or transfer of an interest in a mining tenement or petroleum license that is subject to the legislation cited above.

However, the rule is different for minerals once they are extracted from the ground. Here, the PPSA recognizes that extracted minerals are "goods" under existing PNG law (as well as at common law, generally). The PPSA, therefore, applies to security interests in minerals when they become goods. Moreover, the PPSA creates a procedure by which secured creditors may perfect security interests in minerals (and the accounts that their sale may generate) *before* they are extracted and before they are considered goods. A single registration, therefore, may perfect a security interest from the time of registration in a continuous stream of minerals as they are extracted from the earth pursuant to a license governed by other, existing law.

Under the PPSA, what may formerly have been a company charge over minerals will now be a security interest in minerals, governed by PPSA registration and priority rules. A lender who holds a charge on minerals should register this interest during the 180 day transition period to protect the charge from future creditors who may take a PPSA security interest in the minerals.

Accommodation for registered mortgages on ships & aircraft

The *Merchant Shipping Act* (Chapter 242) provides for the registration and priority of mortgages on certain ships in the Ships Registry. The Act also expressly recognizes other, un-registrable property rights in ships. The *Civil Aviation Act 2000* also provides for the registration and priority of mortgages on aircraft, without precluding other security interests. The Companies Act expressly provides for the registration of charges on aircraft.

The PPSA creates a special priority rule (section 75), taking into account these provisions of existing law, and concluding that disruption of these registration regimes is unwarranted. Under section 75, a registered interest in a ship or aircraft under existing legislation has priority over a PPSA security interest, no matter when the security interest arises and no matter whether or when a notice of the interest is registered. In the absence of a registered interest under existing law, security interests created in ships or aircraft under the PPSA are enforceable as provided in the PPSA.