



Dear Valued Clients and Associates,

Welcome to our Winter 2006 newsletter. We would be interested in your feedback (just press the reply key) and please do not hesitate to contact us in respect of any matters that we may be of assistance to you.

## Redundant Charges Reminder

You may recall that a couple of years ago we advised you about removing redundant charges from your company's records. It is timely to review this issue, as it has affected Duthie Whyte clients on a number of occasions during the past year. Here is one example. A Duthie Whyte client was in the process of completing a major refinancing transaction. A Personal Property Securities Register (PPSR) search of the company revealed a financing statement lodged by a supplier, presumably on the basis of a retention of title clause in a supply agreement. This kind of financing statement is called a purchase money security interest (PMSI) and it will have what is known as a "super priority" over all other registered interests. Our client was no longer purchasing stock from the supplier and its account was fully paid. Nevertheless, the lender required our client to have the PMSI removed. Needless to say, this meant entering into correspondence with the supplier in the hope that they would be cooperative and act promptly. Luckily, in this case they did and the PMSI was removed without too much delay.

We are finding that many suppliers register PMSIs before any goods are supplied or even before a supply agreement is signed. While they are allowed to do this (if they have it in the documents), it can be very inconvenient for the customer to undo, and may cause unnecessary delays to important transactions.

In case you find yourself in this situation, we recommend that you make sure you do the following:

retain the financing statement debtor PIN number that you receive when the financing statement is registered, so that you can lodge a change demand;

institute a policy for immediately removing financing statements once you are no longer using a particular supplier and run a check on your organisation in the PPSR on a regular basis. You will recall the PPSR is totally an "online" register.

If you follow these recommendations you can greatly minimise the time spent on removing redundant charges at the last minute and the resulting delays in completing necessary refinancing.

## What to do with your PMSIs

If you are a person or organisation that needs to take a PMSI in certain types of property it is very important to remember this: you will lose your super priority if you do not register your PMSI within 10 working days after the debtor obtains possession of the goods or within 10 working days after a security agreement in respect of an intangible (such as an intellectual property right) is signed. Even more urgent is the case regarding inventory or its proceeds. You will lose your super priority if you do not register your security interest at the time that the debtor obtains possession of your goods.

For example, if you are selling a business and leaving the inventory in the warehouse to be sold on your behalf by the purchaser, make sure that you register your security as soon as the purchaser gets possession of the inventory in the warehouse. If you do not do this then you will lose the super priority, and possibly lose your security as it will most likely rank behind other parties such as lenders and so will effectively be useless.



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## Practical Tip

Where a supplier sends you "standard terms" terms of trade or an innocuous looking "supply agreement" ask them whether it gives them a right to lodge a PMSI and whether there are any personal obligations on your part. If they require a PMSI ensure you are happy with that and keep a record of it. If a personal obligation (as opposed to a company obligation) is created then seek our advice as to the possible ramifications.

## Crossing Cheques – A Checklist!

Many of us are not always sure about how to use the various forms of cheque crossings. Cheques have historically been transferable and negotiable instruments for payment. The various crossings have been developed to restrict these characteristics. Since each form of crossing has a different legal effect it is important to get them right. As there have been numerous recent instances of cheque fraud, here is a refresher.

"General crossing", two parallel transverse lines across the cheque – the effect of this is require the drawee bank to pay the cheque into a bank account as opposed to paying cash across the counter.

"Not negotiable" within the parallel transverse lines– this one is now often pre-printed onto business cheques. It has a dual effect - to require the cheque to be paid into a bank account and to prevent a person taking the cheque from having a better title to it than the person he took it from had.

"Not transferable", "account payee" or "account payee only" within transverse parallel lines – another with a dual effect, to require the cheque to be paid into a bank account and to prevent it from being paid to any one other than the person named on the cheque. Any endorsement on the cheque will be of no effect. For example, if the first name written on it is crossed out and replaced with another name the bank is required to ignore that replacement. This crossing is very important if you don't want the cheque to be used fraudulently!

Finally, remember to cross out "or bearer" if you don't want it to be paid to the bearer, whether in cash or into their bank account. If you don't cross this out the bank will take it as an instruction that it is okay to pay it to the bearer of the cheque!

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