

Annexure A: PPSA asset scenarios

Below is a list of scenarios that might be caught by the new legislation, but this will ultimately depend on the circumstances of each case.

Equipment use

Leases for plant, equipment and other property may be registrable security interests. The supply of equipment in an agency, outsourcing or franchise arrangement might also be captured.

Transfers of receivables

Transfers of receivables (for example, the cash flows associated with consumer contracts for the provision of services).

Phone handsets, set-top boxes and other stock

If a business has obtained finance by offering security over its mobile handsets, set-top boxes or other retail stock, a registrable security interest may be created. This includes where goods are held on consignment. Consumer contracts governing the provision of services where the company retains ownership of the asset may be security interests.

Joint venture

Joint venture agreements may also fall within the regime depending on the cross charges and default clauses in the agreement. It will also be necessary to review any dilution provisions. For example, if a dilution provision enables JV Party A to acquire personal property of the JV Party B (for example if JV Party B cannot meet capital calls), then JV Party A may have a security interest which will need to be registered to be protected.

Intellectual property

The PPSA contains specific rules in relation to security interests in goods that have closely associated IP rights and, in some cases, the PPSA may deem IP rights to be covered by a security agreement. Security interests in relation to computer equipment, master recordings, copyright material and other assets with closely-related IP should be reviewed in this light.

Franchises

Transactions raising finance against projected franchise fees, using franchised IP as the collateral.

Retention of Title (RoT)

Retention of title terms will now be classified as a type of 'security interest', rather than an ownership claim. It will now be necessary to register all sales by RoT and ensure that RoT clauses in supply agreements comply with the requirements of the PPSA.

Farm ins/Farm outs

Farm ins and Farm outs may be affected in relation to minerals and petroleum (once extracted). Minerals and petroleum, once extracted, are personal property. In such cases, and where the farmer retains title until the farm in work is complete, the farmer may have a security interest.

Commingling of product

The PPSA may apply where goods are stockpiled and commingled, or asset sale proceeds are deposited into bank accounts into which many parties have a 'tracing' or 'following' claim.