

BULK OR NO BULK - THE PPSA IS ALWAYS IN STYLE

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As we reported in our March 2017 bulletin "[And then there were none; Ontario has repealed the Bulk Sales Act](#)", the *Bulk Sales Act* (Ontario) (the "**BSA**") was repealed as a result of the coming into force of Schedule 3 of Bill 27, the *Burden Reduction Act*, 2017. While the repeal of the BSA has been heralded as removing outdated legislation and bringing Ontario in line with other provinces (and most of the United States), certain creditors may be left questioning how to best protect and enforce their interests.

It is strongly recommended that creditors who supply goods in an asset purchase register their interests under the *Personal Property Security Act* (the "**PPSA**"). By utilizing the PPSA registration system, creditors have access to a low cost and effective method of enforcing their security interests. The BSA sought to protect creditors from a debtor selling the assets over a short period of time (thereby preventing creditors from retrieving the assets) while leaving its creditors unpaid, and applied to the sale of assets involving all or part of a business when the sale was not in the ordinary course of the debtor's business. In the case of default, the creditor could apply to the court for an order against the debtor.

Conversely, the PPSA allows a creditor to perfect its security interests in the assets of a debtor prior to a debtor defaulting on a loan agreement or selling its assets. Under the PPSA regime, should a debtor default on a loan agreement, the secured creditor may seize and effect the sale of the assets in order to apply the proceeds to the outstanding debt. Thus, the PPSA regime may afford more control to the creditor as compared to the BSA, which required the court to determine a remedy.

Further, pursuant to the PPSA, creditors who supply goods can obtain a super-priority interest in the goods by registering a "Purchase Money Security Interest" (a "**PMSI**"). By registering a PMSI, lenders who provide financing for the acquisition of goods or equipment gain priority over other secured creditors.

The BSA was a cumbersome regime involving high costs and long delays for an asset purchase transaction. More often than not, parties waived compliance with the BSA regime, as the costs involved in seeking advice on its implementation unduly delayed transactions. The PPSA registration is a simple, cost efficient way to ensure that creditors' interests are protected. By effectively utilizing the PPSA, creditors are unlikely to feel negative effects from the repeal of the BSA.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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