

Ashurst

**Personal Property Security
Act & Register (PPSA/PPSR)
fundamentals**

**PNG continuing legal education for
mediation and commercial law**



Overview

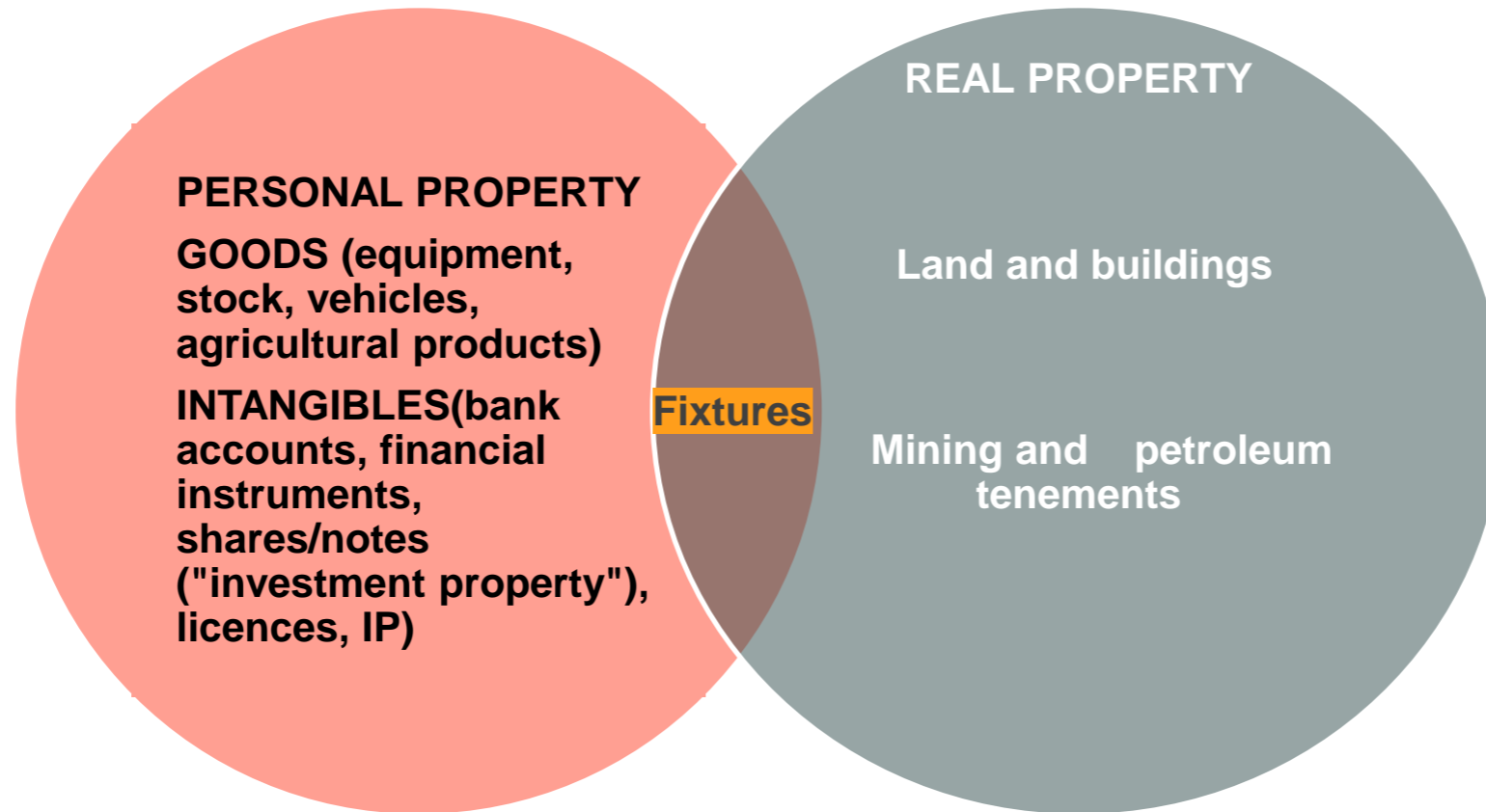
1 New code- covers buying and financing of goods

2 Super priority of purchase money security interests

3 How to use the PPSR registry

What is personal property

PPSR applies to personal property (and fixtures- but not to real estate)



Transactions concluded before 16 May 2016

- “Buyer Beware” principle (no one can give what they do not have- *nemo dat*) s21 *Goods Act* meant that a mortgagee cannot get better title than mortgagor in goods

- Mortgagee of goods would have to prove they are a purchaser for value in good faith without notice of prior interest

- These laws continue to apply to transactions concluded before 16 May 2016 (s119 of PPSA)

Post-PPSA- the new key principles

A complete legal code protecting buyers and financiers from hidden security interests

- Buyer or lessee of consumer or farm* goods under K5,000 protected (except with knowledge** of prior interest)

- Buyer or lessee of any goods sold or leased in ordinary course of business protected (except with knowledge** of prior interest)

- Buyer of motor vehicle MUST search register and can rely on it

- Lender of money to purchase goods is protected

* Farm probably includes garden?

** Knowledge is objective test (s5- *information acquired under circumstances in which a reasonable person would take cognizance of it*)

The new language of buying and securing personal property (in comparison to legal concepts before 16 May 2016)

Collateral – goods subject to mortgage or charge

Debtor - borrower

Secured Party – lender, chargee, mortgagee, lessor

Attach – documenting OR creating, in substance, a security interest
(for example through retention of title or leasing)

Perfected/ perfection – registered OR enforceable in order to obtain priority. This can occur by registration in the PPSR OR by obtaining possession/control of the collateral

Purchase Money Security Interest ('pimsi') – 'super priority' for financing the purchase or lease of goods by the debtor

Security Agreement ('specific OR general')– chattel mortgage, equipment lease etc

Security Interest – chattel mortgage, hire purchase, pledge, equipment lease

Transactions that are subject to the PPSA (s 10)

The underlying transaction is the main thing; title is a separate question, priority rules exist



**Transaction/in
substance**

(Does not have to be
documented)



**To secure payment (or
performance of an
obligation)**

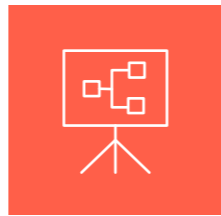
Deemed Security Interests

These are transactions that are equivalent to security

There is no underlying payment or performance obligation (so could be outside the normal definition, but economic effect is like security)



Transfer of a bank account or hire purchase agreement
Account or “chattel paper” as defined



Sale of goods on consignment
Consignee has possession but is not the owner



Lease (term exceeding one year)
By a financier
(Lease of real property with fixtures excluded)

Examples of security interest transactions included in the PPSA (s10(b))

Chattel mortgages	Leases of goods	Conditional sales agreements (including RoTs)
Fixed charges	Assignments	Hire purchase agreements
Floating charges	Pledges	Consignments

Excluded transactions (s 11)

NOT subject to the PPSA (so general legal principles apply)

1	Liens Eg holding goods for repair- automatic priority under s 53	5	Registered ship mortgages (s 75(a))
2	Authority to deduct from pay	6	Implied warranties This is covered by Goods Act
3	Debt collection by assignment ("factoring")	7	Seller of shipped goods reserving title in negotiable bill of lading (made to the order of the seller) (Normal shipping procedure; not registrable under PPSA, Goods Act applies)
4	Tenements (mining & petroleum) creation or transfer of interest HOWEVER security holders typically do register under "both" registers		

Perfection

3 main ways for enabling enforcement and obtaining priority by the Secured Party after the Security Interest has attached to the collateral



Register in the PPSR
(s24)

- Can be registered in advance, if authorised
- No general time constraint (except for PMSI)



Possession taken (for
tangible assets) (s25)



Control taken (mostly for
intangible assets like
shares or a Deposit
Account) (s26)

Super priority for Purchase Money Security Interests (PMSI) (Purchase price and lease financing)

4 types of security interest in collateral have an overriding priority over other perfected security interests if:



It secures all or part of the purchase price



It was lent for the purpose of obtaining rights in the property



It is the interest of a lessor under a lease for a term of more than 1 year (*except sale/leaseback*)



It is the interest of a consignor in goods under “commercial consignment”

Previously in this scenario an existing financier would automatically get security (except for leased goods)

Super priority for Purchase-Money Security Interests (PMSI) (s41)

- Generally the financier can get priority over earlier registered/perfected securities – but safest to register (describing the goods) within 7 days after debtor gets possession of goods
- (this has been interpreted to apply even if the debtor held the goods in some other capacity)



PMSI for inventory- special rules for the special priority (s42)

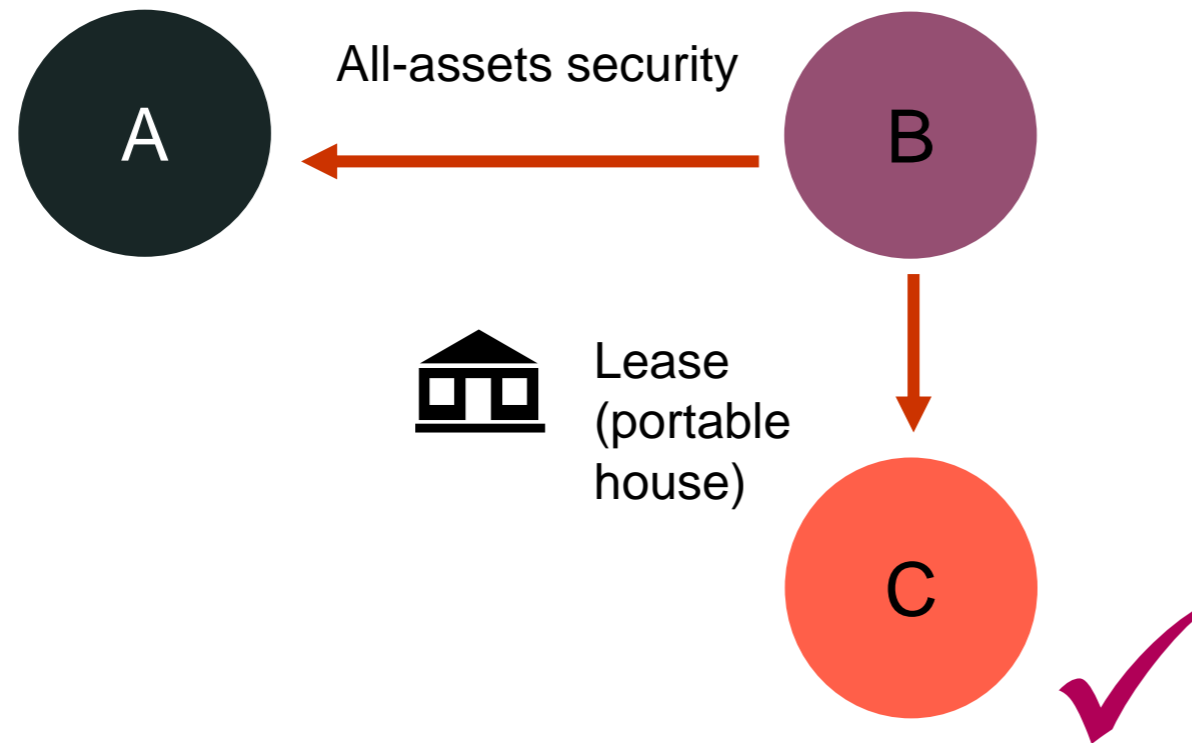
- For stock, equipment in a leasing/ service business, or work-in-progress in any), financier must register, describing the collateral
- To get priority over proceeds of the sale of the inventory, the financier needs to serve **notice in advance** on any existing registered financiers stating and describing the PMSI it has or expects to get (so to achieve this, the timing is stricter than registration within 7 days)



Lessor's super-priority over earlier registered security

Lessor registers within time

Example:



A (bank) registers all-assets security on 1 Feb

C (lessor) leases portable house to B (lessee) and registers on 8 Feb

A's interest attaches to house

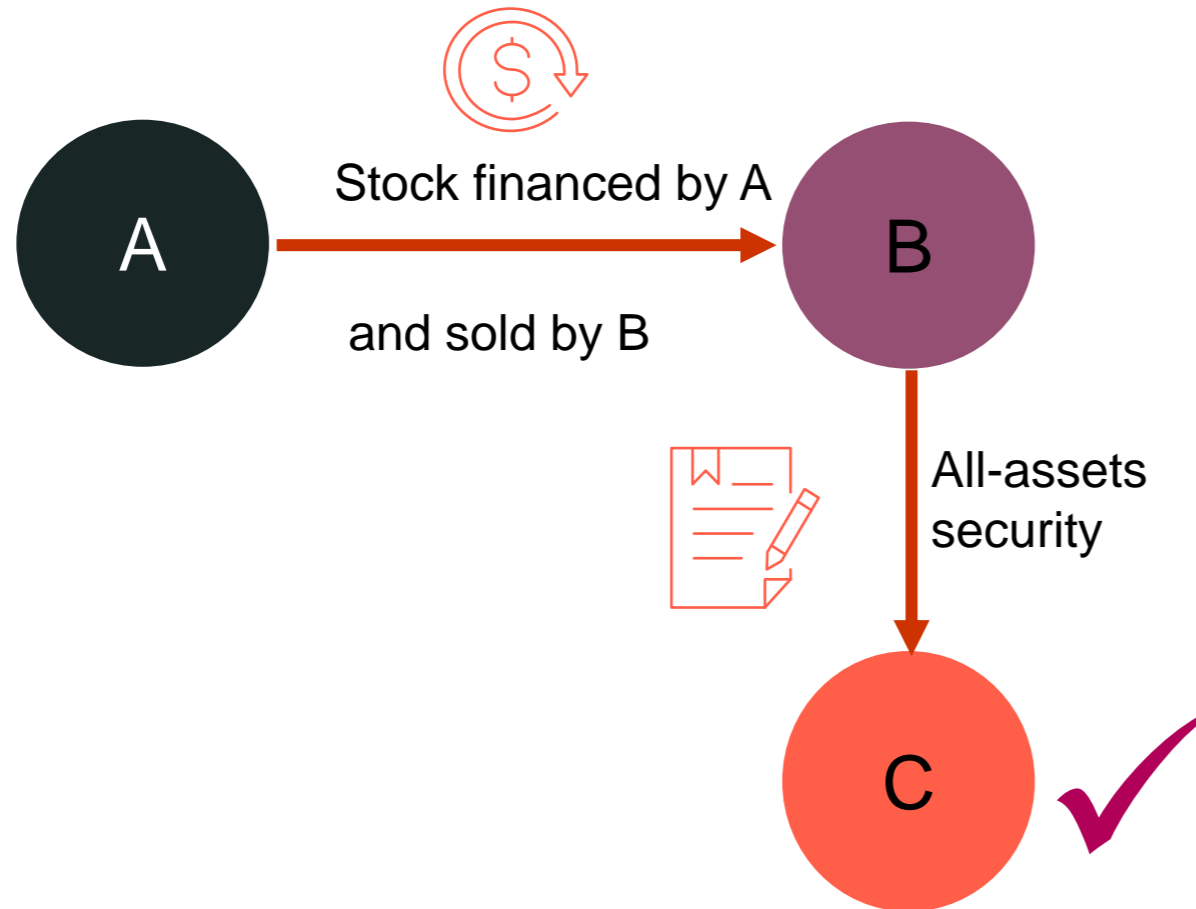
C has lease with term >1 year and perfected this security on 8 Feb

C has priority

Failed to obtain super-priority

Stock financier fails to register

Example:



A (financier) does not register

C (bank) perfects by registration

C's interest attaches

C has priority

If B defaults, C can take
proceeds of sale of stock

General priority rules

Section 33 of the PPSA

In a competition between ...

... who wins?

Perfectured vs unperfectured Security Interest

Perfectured Security Interest

Perfectured vs perfectured

Based on earlier of registration or perfectured

Unperfectured vs unperfectured

First to attach

Special priority rules

Various special priority rules by type of asset or transaction

1	Transferees of negotiable collateral These rules relate to proceeds of sale, purchasers of securities or other documents of title (ss55 – 59)	4	Security interests in fixtures (ss68- 71)
2	Assignment of accounts (ss60- 64)	5	Crops Crops can be secured separately from the land (s72)
3	Deposit accounts and investment property This includes rules where a third party has security over a bank account (ss 3, 4, 65- 67)	6	Accessions (added to other goods) Generally, security extends to accessions (s73)
		7	Commingled goods (eg manufacturing or storage) Generally, there is a pro-rata principle (s74)

Execution creditors

Specific circumstances where rights of a creditor are recognised and can be registered

01

Judgement creditor

(In relation to personal property or fixtures)

02

Landlord

If it holds security rights under the lease to the tenant's own property (which would require express terms)

03

Liquidator or trustee in insolvency

Search personal property... AND SAVE/ PRINT THE RESULT

Better still, get the Certified Search Verification

The screenshot shows a web browser window with the URL <https://www.ipa.gov.pg/str/search.aspx?public=true#!/>. The page header includes the logo for the Investment Promotion Authority (IPA) of Papua New Guinea and navigation links for Help, Contact Us, Downloads, Create Account, and Log In. A secondary navigation bar contains Home, PPSR Search, Our Services, How To Guides, Law & Regulations, and Online Registries. The main content area is titled "Search" and features a search bar with "SEARCH" and "CANCEL" buttons. Below the search bar are four tabs: "Debtor", "Real Property Identification Number or Motor Vehicle Serial/VIN", "Notice Registration Number", and "Certified Search Verification". The "Debtor" tab is active, showing a "Party Type" dropdown menu with "Company" selected and a green checkmark. Below this is a text box for the "Entity Registration Number", which is currently empty and has a red "X" icon next to it, indicating it is a mandatory field. A note explains that the entity registration number is issued by the IPA upon incorporation and can be found on the Certificate of Incorporation.

Search

SEARCH CANCEL

Debtor Real Property Identification Number or Motor Vehicle Serial/VIN Notice Registration Number Certified Search Verification

Party Type

Company ✓

The entity registration number is the number issued by the Investment Promotion Authority upon incorporation of the entity. It may be found on the Certificate of Incorporation issued by the IPA.

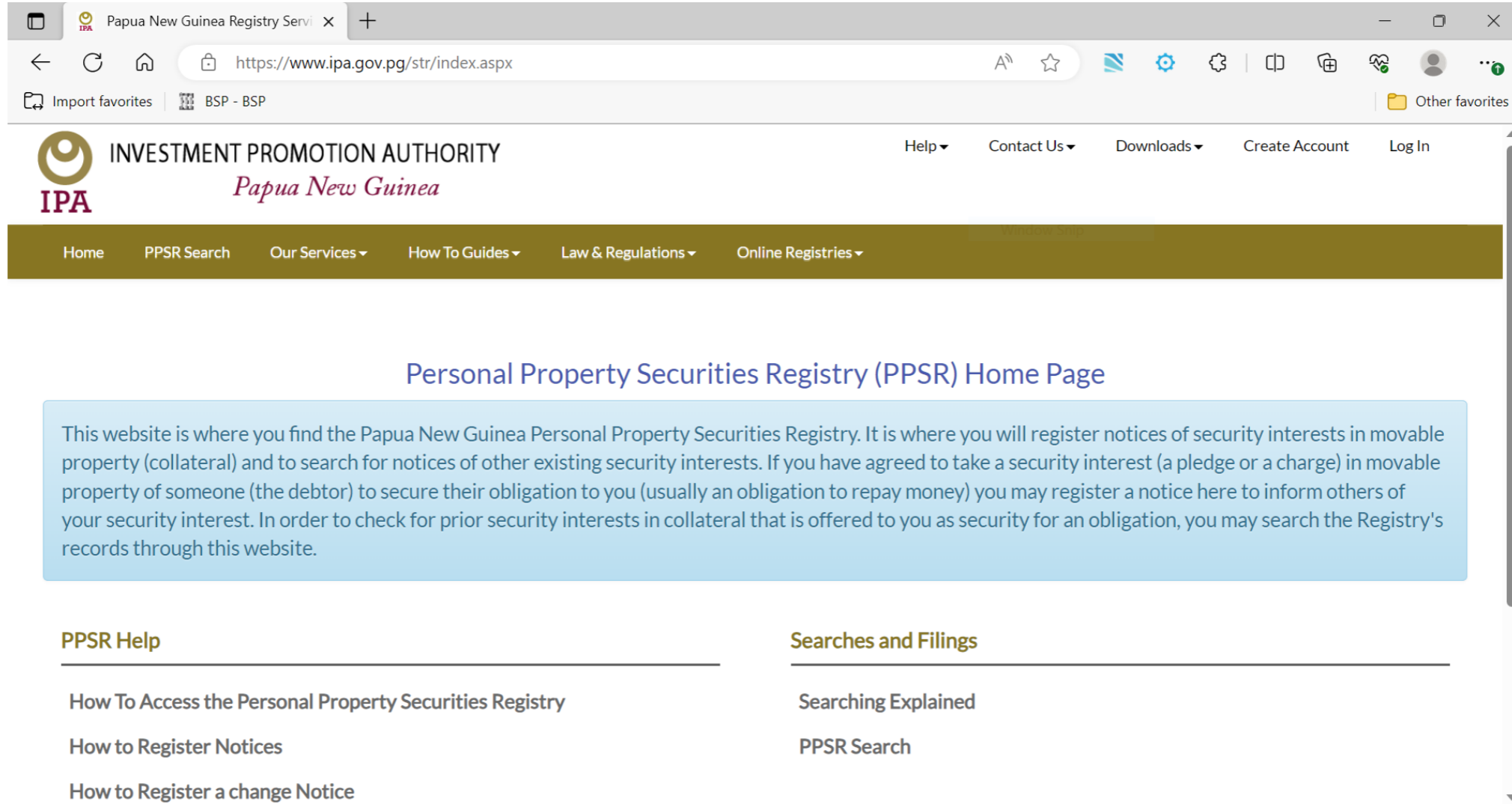
Entity Registration Number

✗

Mandatory

PPSR home page & account


Essential that your office has this properly set up with individual users



Papua New Guinea Registry Servi x +

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🔗 Import favorites | 📁 BSP - BSP | 📁 Other favorites

 **INVESTMENT PROMOTION AUTHORITY**
Papua New Guinea

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Personal Property Securities Registry (PPSR) Home Page

This website is where you find the Papua New Guinea Personal Property Securities Registry. It is where you will register notices of security interests in movable property (collateral) and to search for notices of other existing security interests. If you have agreed to take a security interest (a pledge or a charge) in movable property of someone (the debtor) to secure their obligation to you (usually an obligation to repay money) you may register a notice here to inform others of your security interest. In order to check for prior security interests in collateral that is offered to you as security for an obligation, you may search the Registry's records through this website.

PPSR Help

- How To Access the Personal Property Securities Registry
- How to Register Notices
- How to Register a change Notice

Searches and Filings

- Searching Explained
- PPSR Search

PPSR tips & tricks

- Aim is to identify the collateral (document descriptions might help but are not essential) or say “All of the Debtor’s present and after-acquired property”
-
- Assumed expiry period is 5 years- can change to 20 years
-
- Inform Secured Party of expiry date & code (not the Debtor!)
-
- For fixtures, include Vol/Fol of the land that it is affixed to (gives priority)
-
- For motor vehicles, include VIN (gives automatic priority)
-

The art of reading a PPSR search

All notices appear whether current, lapsed or terminated- safest to print/save & mark

Notice of Security Interest - 1005736570

Initial

<https://www.jp.gov.pg/itri/search.aspx?publort=true#>

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Papua New Guinea Registry Services

Registration Information

Registration Number	Registration Date/Time	Lapse Date
1005736570	24/01/2021 03:02 PM	14/01/2026

Debtor

Party Type	Party Details	Party Address
Company	Company PNG Air Limited Registration Number: 1-24926	PO Box 170, Boroko, National Capital District, Papua New Guinea

Secured Creditor

Party Type	Party Details	Party Address
Secured Party	Secured Party ATREAS TEIN SUPPORT PTE LTD	12 Seletar Aerospace Link, Singapore 797553, Singapore
Secured Party	Secured Party AVIONS DE TRANSPORT REGIONAL G.I.E.	1, Allée Pierre Nadoit, 31712 Blagnac, France

Collateral Description

All parts, elements, equipments, tools, items and other goods, including but not limited to line replaceable units, landing gear, propellers, landing gear, spare parts and any of their respective sub-assemblies or sub-components, leased or supplied by the secured parties.

Termination

Registration Information

Termination

Registration Information

Registration Number	Registration Date/Time	Lapse Date
10063705	28/01/2021 11:20 AM	14/01/2026

Authorizing Party

Party Type	Party Details	Party Address
Secured Party	Secured Party AVIONS DE TRANSPORT REGIONAL G.I.E.	1, Allée Pierre Nadoit, 31712 Blagnac, France

<https://www.jp.gov.pg/itri/search.aspx?publort=true#>

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Papua New Guinea Registry Services

Secured Party	Secured Party AVIONS DE TRANSPORT REGIONAL G.I.E.	1, Allée Pierre Nadoit, 31712 Blagnac, France
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Enforcement of security interests

The PPSA Parts 4 (Rights and duties) and 8 (Enforcement) contain a full set of provisions dealing with enforcement, which are triggered on default



Main duties are:

- Preserve collateral (s17)
- Act in a commercially reasonable manner (s100)
- Give notices (s101)



Statutory regime is alternative/ additional to contractual regime (s96)



Enforcement rules do not apply to:

- Deemed security interests (s95(1)(a))
- Personal property under control of receiver (s110)

Key cases in Aust/ NZ

Case	Subject matter
<i>Waller v New Zealand Bloodstock</i> [2006] NZLR 629	Subsequent financier took priority over owner which had failed to register
<i>Maiden Civil (P&E) Pty Ltd</i> [2013] NSWSC 852	Similar to Waller
<i>Allied Distribution</i> [2017] SASC 163; <i>StockCo Agricapital</i> [2020] NSWSC 318	PMSI for refinancing of goods in possession
<i>Dalian Huarui v Clyde & Co</i> [2020] WASC 132	Intended beneficiary of funds in solicitor's trust account under escrow agreement

Questions and answers

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