

Financial Services Flash

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Amendments to the *PPSA* Debtor Location Provisions

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Effective December 31, 2015, certain provisions of the *Personal Property Security Act* (PPSA) will be amended as follows:

- a) subsection 7(3) will be repealed and replaced;
- b) subsections 7(4) and (5) will be added;
- c) a new section 7.2 will be added; and
- d) a new section 7.3 will be added.

Under the repealed subsection 7(3) of the *PPSA*, the location of the debtor was deemed to be the debtor's place of business, if there was one, or the debtor's chief executive office if there was more than one place of business. This provision often made it difficult to determine where to register a security interest against a debtor because the debtor could have multiple places of business none of which was clearly its "chief executive office." Such a situation would consequently require multiple registrations across different jurisdictions.

The newly introduced provisions of the *PPSA* amend the location of the debtor to be that where the debtor is "organized" for the purpose of registering security interests in certain types of intangible assets and mobile goods. If the debtor is a corporation, a limited partnership or an organization and is incorporated, continued, amalgamated or otherwise organized under the laws of a

province or territory that requires the disclosure of such a public record, then the debtor is deemed to be located in that province or territory. If the debtor is a corporation incorporated, continued or amalgamated under Canadian law that requires the disclosure of such a public record, then the location of the debtor is the jurisdiction set out in the special Act, letters patent, articles or other constating instrument that the debtor is incorporated under. If these constating documents do not exist, then the location of the debtor is the jurisdiction set out by the debtor's by-laws.

This amendment concerning the debtor's location will reduce the uncertainty previously associated with determining where the debtor's chief executive office is located, making it easier to determine where to register relevant interests. The amendments to the *PPSA* align these provisions in part with those of the United States' *Uniform Commercial Code*. These provisions apply only to certain intangibles and mobile goods, and do not apply to registrations for the purpose of registering security interests in other assets such as physical goods.

The new provisions will make it easier to do business within Ontario, but these provisions are not coordinated with other provinces and could make it more difficult to do business in those jurisdictions. British Columbia, for example, still enforces provisions indicating that the location of the debtor is where the debtor's chief executive office is located.

The new provisions of the *PPSA* will reduce the guess work of determining where to register a security interest in certain intangibles and mobile goods against a debtor in Ontario. The uncertainty of where to register still exists, however, for other assets such as physical goods and in other jurisdictions with conflicting provisions.

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