



LEGAL FORMS – WHAT’S NEW? August 2013

5.5 – LIV COMMERCIAL LEASE OF REAL ESTATE

The Personal Property Securities Act 2009 (Cth) (PPSA), which commenced on 30 January 2012, introduced a national online register of security interests in personal property which replaced many previous schemes that dealt with the registration of interests over personal property in Australia.

The LIV has prepared an additional provision for the LIV Commercial Lease of Real Estate (LIV Lease) which specifies the parties’ rights and obligations if the PPSA applies. The additional provision should be included under item 22 of the Schedule to the LIV Lease and numbered appropriately. This additional provision will be incorporated into the LIV Lease in the next revision together with the NBN additional provision which was circulated in November 2011.

ADDITIONAL PROVISION

Personal Property Securities Act

#.1 In this additional provision, ‘PPSA’ means the *Personal Property Securities Act 2009* (Cth).

#.2 In this lease, the definition of **landlord’s installations** is amended to read:

‘means any property of the **landlord**, other than land or fixtures, from time to time in the **premises** or on the **land** and includes the property listed in **item 5**’ .

#.3 Expressions used in this additional provision that are defined in the PPSA have the meanings given to them in the PPSA.

#.4 The **landlord** may, at any time, register a financing statement with respect to any security interest arising out of or evidenced by this lease over any or all of –

- (a) the **landlord’s installations**,
- (b) any security deposit provided by the **tenant**, and
- (c) **tenant’s installations** and other **tenant’s** property left on the **premises** after the end of the lease,

that are personal property, and must identify the property affected by the financing statement in the free text field of the statement. * The **tenant** waives the right to receive notice under section 157(1) of the PPSA. [***Delete if inapplicable**]

#.5 When this lease:

- (d) ends and the **tenant** has vacated the **premises** and performed all of its obligations under the lease, or
- (e) is transferred,

the **landlord** must register a financing change statement with respect to any security interest for which the **landlord** has registered a financing statement other than those to which paragraph #.4(c) relates.

#.6 The **tenant** must sign any documents and do anything necessary to enable the **landlord** to register the statements referred to in the preceding sub-clause and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, if the **tenant** is a natural person, the **tenant** must provide the **landlord** with the **tenant’s** date of birth and a certified copy of a Victorian driver’s licence (or other evidence acceptable to the **landlord**) to confirm the



tenant's date of birth. The **landlord** must keep the **tenant's** date of birth and any evidence provided to confirm it secure and confidential.

- #.7 The **tenant** must not register, or permit to be registered, a financing statement in favour of any person other than the **landlord**, with respect to any security deposit provided by the **tenant** or any of the **landlord's installations**.
- #.8 The **tenant** must pay the **landlord's** reasonable expenses and legal costs in respect of anything done or attempted by the **landlord** in the exercise of its rights or performance of its obligations under this additional provision or the PPSA *, except the **landlord's** costs of registering a financing statement under paragraph #.4 which are to be borne by the **landlord**. [***Delete if inapplicable**]
- #.9 In accordance with sub-section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in sub-section 275(1) of the PPSA.
- #.10 Subject to any requirement to the contrary in the PPSA, notices under this additional provision or the PPSA may be served in accordance with clause 14 of the lease.