

Goodmans^{LLP} Update

Ontario PPSA Amended to Incorporate Rules Relating to Electronic Chattel Paper

Certain amendments to Ontario's *Personal Property Security Act* (PPSA) came into force on May 15, 2020, which introduce the concept of electronic chattel paper (ECP). Chattel paper is defined in the PPSA as "one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods", and is commonly used in connection with the sale or lease of vehicles and equipment.

The amendments serve to modernize Ontario's PPSA regime by facilitating the financing and securitization of ECP. The newly enacted provisions set out, among other things, the rules for what constitutes ECP, a rule for perfection by control of ECP and corresponding amendments to certain conflict of laws provisions and the priority rules for purchasers of chattel paper. The key changes to the PPSA are summarized below.

Definitions

The PPSA definition of chattel paper has been revised to refer to "records" rather than a "writing". The updated rules now recognize both "tangible chattel paper" (TCP), i.e., chattel paper evidenced by a record on a tangible medium and ECP, i.e., chattel paper which has been created, recorded, transmitted or stored in a digital or other intangible form.

Conflict of Law Rules

The conflict of law rules in the PPSA have been updated to accommodate the co-existence of TCP and ECP. Section 5(1) of the PPSA has been amended to state that a possessory security interest in an instrument, negotiable document of title, money or TCP shall be governed by the law of the jurisdiction where the collateral is situated at the time the interest attaches. Section 7(1) of the PPSA has been updated to provide that a security interest in ECP or a non-possessory security interest in an instrument, negotiable document of title, money or TCP shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

Perfection by Control

Under sections 1(3) and 22.2 of the updated rules, a secured party may establish perfection by control over ECP, which is the best method of perfecting a security interest over ECP as it provides super-priority over other methods of perfection. To establish control, there must be a single, authoritative record of the ECP that is unique, identifiable and unalterable other than in accordance with certain conditions enumerated in the same section. This authoritative record should identify the secured party as transferee, and should be communicated to and securely maintained by the secured party or its designated custodian. The only manner in which the ECP should be alterable is if (i) an identified transferee is added or changed with the secured party's consent, (ii) any copies of the record are identifiable as such, and (iii) it is clear whether any amendment of the record is authorized or unauthorized.

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Priority Rules

Section 28(3) of the PPSA has been amended to provide that a purchaser of chattel paper will have priority over any security interest if, in the ordinary course of the purchaser's business and for new value, it takes possession of TCP or obtains control of ECP, and the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

Under s. 28(3.1) of the amended PPSA, in the event that rights arising out of TCP are transferred to a purchaser as ECP in the ordinary course of that purchaser's business and for new value, and the TCP is transferred to another purchaser who takes possession of it in the ordinary course of that purchaser's business and for new value, the interest of the purchaser of the TCP has priority over the interest of the purchaser of the ECP if the TCP does not indicate that it has been assigned to an identified assignee other than the purchaser of the TCP.

Looking Forward

The introduction of electronic chattel paper is a forward-looking development to Ontario's PPSA regime, which recognizes the increasing importance of electronic documentation in commerce. The rules outlined above will allow secured parties to more easily create and finance security interests in ECP, and will reduce the costs and time associated with the process.

For further information on these amendments, please contact any member of our [Banking and Finance Group](#).

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