

**INFORMATION AND PROTOCOL -
ABA & AFC INDUSTRY MODEL PRIORITY AND RELEASE DOCUMENTS**

OCTOBER 2012

Following commencement of the Personal Property Securities Register in January 2012, the opportunity has been taken by two industry associations, the Australian Banker's Association (ABA) and the Australian Finance Conference (AFC), to make available to the banking and finance industry and its advisors a set of industry model priority and release documents as a way of improving efficiency of operations and reducing costs. This document sets out the status of the industry model documents, their potential usage and protocol for their use.

The documents

The documents are

- A Priority Deed made up of two parts:
 - Execution Pages for signing by the parties. This contains the specifics of the transaction; and
 - Operating Provisions containing standard terms
- A Release and Undertaking to Amend Registration (Release)

The preparation of the industry model priority and release documents was prompted by the reforms introduced under the *Personal Property Securities Act 2009* (PPSA). However the documents may, in appropriate cases, be used where security involves any type of personal property or real property.

Status of the documents

The documents are models only. They are neither endorsed nor approved by the ABA or the AFC or the members of either association. The appropriateness and use of the model documents are entirely a matter for individual businesses, based on legal advice provided to them specifically, the transaction in contemplation and the nature of their business operations. The model documents were developed in consultation with members of the ABA and the AFC, as well legal advisors to members and the industry.

While the Commonwealth Attorney-General's Department appreciates this industry initiative, the Department did not participate in the consultation process and does not endorse or approve the model documents.

Accessing the documents

The ABA and the AFC host the model documents and this Information and Protocol statement on their websites at:

<http://www.bankers.asn.au/Submissions/Personal-Property-Securities> and
www.afc.asn.au/afc_info/publications.html.

The documents are available for download by anyone who wishes to use them. They are version-identified by date.

If it is proposed to change the model documents or this Information and Protocol statement, at least one month's notice of that will be posted on both websites. Changes will only occur after consultation with ABA and AFC members.

The Priority Deed - Execution Pages and the Release are available in editable format. The Priority Deed - Operating Provisions is only available in non-editable format.

Conditions of download

Anyone wishing to rely upon the model Priority Deed must not change the Operating Provisions. If they do, they must not represent the documents submitted to another party are the industry model documents.

Anyone relying on, or using, the documents must not represent that they are endorsed or approved, or their use is required by, the ABA or the AFC or any of their members.

Preferred use

To foster confidence in using the Priority Deed, the ABA and the AFC prefer the Operating Provisions are incorporated by reference in the Execution Pages, rather than being included as part of the priority deed document. The Execution Pages reflect this preferred approach.

Incorporating the operating provisions by reference will give all parties confidence about the Operating Provisions applying to the Priority Deed being executed at that time.

If parties have agreed to use the Priority Deed, incorporation by reference will save them verifying whether the document presented for signature is the same as that on the associations' websites.

Contemplated scenarios for use of the Priority Deed

The Priority Deed cannot be expected to address all scenarios in which subordination agreements could be used in the context of the Personal Property Securities Act.

Following is a high level description of the scenarios contemplated by the Priority Deed for security interests registered on the Personal Property Securities Register. Whether the model documents are appropriate to use, with or without modification, in particular instances is entirely a matter for secured parties.

Scenario 1

Secured Party 1 is the preferred party, with specified amounts for 1st and 2nd priorities, and the residual to Secured Party 1

Scenario 2

Secured Party 1 is the preferred party, with specified amounts for 1st priority and unlimited amount for 2nd priority, and the residual to Secured Party 2

Scenario 3

Secured Party 1 is the preferred party, with unlimited amount for 1st priority, and the residual to Secured Party 2

Scenario 4

Specified assets subject to different priorities – **non-bailment** context

- Secured Party 1 has unlimited amount for 1st priority in described assets and unlimited amount 2nd priority in other assets
- Secured Party 2 has unlimited 2nd priority in described assets, with specified amount 1st priority and residual in other assets

Scenario 5

Specified assets subject to different priorities - **bailment** context

- Bailment facility provider has unlimited first priority in described assets, with unlimited 2nd priority in other assets
- Non-bailing Secured Party has unlimited 2nd priority in described assets, with specified amount 1st priority and residual in other assets

Protocol

To enhance the efficiency of procedures associated with requesting and giving Priority Deeds and Releases (or an alternative such as a payout letter), the ABA and the AFC suggest Secured Parties apply the following protocol:

1. The Secured Party requesting a Priority Deed or a Release states whether it intends to rely on the model documents.
2. A Secured Party who decides as a business policy it will rely upon the model documents is encouraged to make publicly known that:
 - a. it has that business policy; and
 - b. the contexts in which it will and/or will not use the model documents; and
 - c. it will apply this protocol, or the extent to which it will vary it.
3. If a Secured Party is not relying on the model documents, or the model documents are not acceptable to the other Secured Party, the parties should proceed as agreed between them.
4. If the model document to be relied upon by the parties is the Priority Deed, the requesting Secured Party prepares and emails or posts to the other Secured Party the Priority Deed - Execution Pages for approval and signature.
 - The Execution Pages will incorporate by reference the Operating Provisions.
5. For transactions involving a settlement procedure, if the model document to be relied upon by the parties is the Release, the outgoing Secured Party prepares and provides the executed Release to the other Secured Party at settlement.
6. For transactions involving goods subject to a specific security agreement or if otherwise agreed by the Secured Parties, it is acceptable for the outgoing Secured Party to provide, instead of the Release, a payout statement (or similar document) on its letterhead stating:
 - a. the basis on which the asset is to be released; and
 - b. when payment occurs, an undertaking to register a financing change statement in respect of the goods (if applicable).
7. The incoming Secured Party will accept the undertaking to register a financing change statement, even if the payout statement is addressed to the customer.
8. If email is used, the email address to be used in each instance is that stated on the Personal Property Securities Register for the security interest which is to be subordinated or from which collateral released.
9. If a Secured Party undertakes to register a financing change statement, it is expected to carry that out within 10 business days of settlement or any shorter period required by the PPSA.
10. A Secured Party receiving a model document for a proposed Priority Deed or Release is expected to reply to the requesting party within 5 business days whether it agrees.
11. In this protocol, the expression 'business days' has the same meaning as in the PPSA.

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