

# PPSA: extension of time to register

The last 12 months has seen a number of court applications being made for extensions of time to register a security interest under s293 of the *Personal Property Securities Act 2009* (Cth) (PPSA) and/or s588FM of the *Corporations Act 2001* (Cth), to avoid collateral vesting in the grantor upon an insolvency event. Common errors seen in these cases include failing to register within 20 business days (where grantor is a company), failing to register against the trust ABN (where grantor is trustee of a trust), failing to identify a security interest as a PMSI interest and defects in serial numbers for serial numbered property. This update summarises the key issues considered by courts when determining applications for an extension of time, and provides practical tips for any secured party who finds themselves out of time to correctly register their interest.

## Key considerations

### 1 Inadvertence

Successful applicants are able to demonstrate to the court that the failure to correctly register in time was an innocent mistake, rather than deliberate disregard for the PPSA.

### 2 Prejudice to other secured parties

Another ground commonly relied upon by successful applicants is that no prejudice will be caused to other secured parties. The question of prejudice goes to prejudice attributable to the delay in correctly registering the interest, rather than prejudice caused by any extension order being granted. Examples where the court has held there was no prejudice to other secured parties include:

- there were existing ALLPAAP registrations but the applicant was not seeking to disturb the priority of existing secured parties;
- where a PMSI registration extension was being sought by an applicant who funded the acquisition of the PMSI asset, and not granting an extension of time would result in existing secured parties gaining a windfall.

### 3 Solvency of grantor and prejudice to unsecured creditors

The courts have also considered the question of the solvency of the grantor and any prejudice to unsecured creditors caused by a late registration. It will not always be possible to lead satisfactory evidence on these points, e.g. there may not be adequate financials available. However, a lack of evidence on these questions will not necessarily be fatal to the application. In some instances, the court has granted the extension of time subject to a 'Guardian Securities' order, which reserves liberty to any administrator appointed within six months of registration of the security interest to apply to set aside the order, if considered to have been prejudicial to unsecured creditors.

### 4 Delay

A lengthy delay in registering a security interest will not on its own prevent an order for extension being made, but it will be relevant to the question of prejudice to others; whether there is a risk that others such as unsecured creditors have dealt with the grantor on the basis that the collateral was unencumbered.

## Practical tips

*Have you registered your security interest and later discovered it was registered out of time? Alternatively, have you registered within time, but discovered your registration was not completed correctly? Or perhaps you have detected you don't have any registration at all. Here's what to do:*

#### • Seek legal advice

You may be able to apply to court for an extension of time. Act promptly in seeking advice. Any delay may have adverse consequences.

#### • Register correctly

Consider correctly registering your interest on the PPSR ASAP, and prior to making the court application.

#### • Prejudice

Invite the grantor and any other secured parties to identify any prejudice arising from a late registration.

#### • Apply for leave

If your lawyer considers there is merit, seek leave from the court and join the grantor and any other parties potentially affected.



### Contact us

Annette Gaber  
Partner, Melbourne  
+61 3 9252 2522  
annette.gaber@gadens.com