

Timeframes for registering A SECURITY INTEREST – PPSA

There are strict timeframes within which a security interest must be registered on the Personal Property Securities Register (PPSR) in order to maintain priority.

Registration should be done as soon as possible, and in certain cases it should be done prior to the security interest attaching to the collateral (such as equipment, stock and other goods).

If the grantor becomes insolvent before you register your security, or if you register outside of the timeframes specified under the Personal Property Securities Act (PPSA), the consequences include –

1. the loss of priority against other secured parties, as priority generally favours the earliest in time. If you lose priority, this means that someone with a higher priority will then be paid out or entitled to seize property before you are (and the risk is that by the time you are being paid out, there are no property or assets left). You can also lose your right to the super priority Purchase Money Security Interest (PMSI);
2. a third-party bona fide purchaser taking assets free from your security interest; and/or
3. loss of the security interest in the event of insolvency of the grantor. In that case, you simply become an unsecured creditor.

This article sets out the timeframes within which you must register your security interest.

Timeframes for Purchase Money Security Interests (PMSI)

A secured party with a PMSI can benefit from a super-priority which defeats all other registered security interests in the collateral (even a general security interest registered earlier in time). A PMSI arises in four main scenarios, including the sale of goods on retention of title (ROT) terms, a lease or hire of goods, consignment, and where a loan is given to purchase specific goods or equipment.

For a PMSI to receive super-priority you must register it within the specific timeframes as follows:

	WHERE THE COLLATERAL IS TANGIBLE PROPERTY	WHERE THE COLLATERAL IS INTANGIBLE PROPERTY
WHERE THE COLLATERAL IS INVENTORY (SUCH AS STOCK)	The security interest must be registered before the time the grantor obtains possession of the collateral.	The security interest must be registered before the time the PMSI attaches, or is created, over the inventory.
WHERE THE COLLATERAL IS NOT INVENTORY	The security interest must be registered within 15 business days of the grantor obtaining possession of the collateral.	The security interest must be registered within 15 business days of the time of attachment, or creation, of the PMSI.

Timeframes for other Security Interests (AllPAAP, non-PMSI)

Under the Corporations Act, security interests must be registered either within 20 business days after the security agreement has been executed or commenced, giving rise to the security interest to come into force otherwise more than 6 months before the grantor becomes insolvent.

If you register outside of the 20 business days and within 6 months of the grantor becoming insolvent, you will lose your security interest all together.

What does this mean for you?

The PPSA is an unforgiving piece of legislation. The consequences of failing to undertake a low cost registration in time can come at a huge cost. In 2016 one business lost \$50 million worth of equipment and in 2017 another business lost \$23 million worth of equipment. In saying that, the Courts have recently showed a willingness to grant an extension of time to register in certain circumstances. If you require assistance in this regard, please feel free to contact us today.