



PPSR Protection in the Event of Insolvency

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What has happened to my security interest?

As a creditor, the primary purpose of obtaining security over personal property is to have recourse against that secured property in the event of default by the debtor. Any creditor relying on security interests must understand the impact of the PPSA and, moreover, ensure that their security interests are properly perfected to achieve the maximum protection possible in the event of the insolvency of the debtor.



This article discusses the interaction of the *Personal Properties Securities Act 2009* (Cth) (**PPSA**) (the **Act**) with existing corporate and personal insolvency laws, largely governed by the *Corporations Act 2001* (Cth) (the **Corp Act**) (for corporate insolvency) and the *Bankruptcy Act 1966* (Cth) (the **BA**) (for personal insolvency). It is noted from the outset that the PPSA does not have the effect of limiting the operation of existing corporate and personal insolvency law, it merely prevails in the event of any inconsistency: see *s264 PPSA*.

Whether you are entitled to enforce your security interest on the debtor's insolvency depends on whether you have perfected your security interest. The failure to perfect a security interest prior to the commencement of select insolvency proceedings will render the security interest, ineffective: see *s267 of the PPSA*. Section 267 of the PPSA applies where a debtor:

1. is placed in liquidation;
2. is placed in voluntary administration;
3. enters into a Deed of Company Arrangement; or
4. is placed into bankruptcy either voluntarily or by sequestration order.

(insolvency proceedings)

In the case of a corporate debtor, there is an additional criteria imposed by section 588FL of the Corp Act, that is, if the creditor is perfecting its security interest by registration on the *Personal Properties Securities Register (PPSR)* that registration must have occurred no later than twenty (20) business days after the date of the security agreement **or** six months prior to the commencement of the insolvency proceedings against the corporate debtor. Failure to register within the first twenty business days should not deter creditors from registering security interests as after the expiration of six months from the date of registration, the security interest will survive the appointment of liquidators, administrators or trustees.

Any unperfected security interest vests in the grantor (being the provider of the security interest to the creditor, most commonly, the debtor) on insolvency pursuant to *section 267(2) of the Act*. Essentially, all this means is that on insolvency the secured property, free of the security interest, vests in the debtor for use by the appointed liquidator, administrator or trustee in bankruptcy (as applicable) or, put another way, the security interest becomes ineffective.

So how do you protect your security interest? By perfection of your security interest.

Creditors need to be diligent in perfecting their security interests, which means that they need to do all that they can possibly do to protect their security interest from other competing security interests.

A security interest is generally perfected where:

1. it is enforceable against a third party, that is, one of the following applies:
 - a. the creditor has possession of the property secured; **or**
 - b. the creditor has control of the property secured; **or**
 - c. there is evidence of a security agreement in writing between the creditor and the debtor which the debtor has adopted by signing or its actions and which sets out the details of the property secured and the creation of the security interest; **and**
2. one of the following applies:
 - a. the security interest is registered on the PPSR; **or**

b. the creditor has control of the property (other than by seizure or repossession); **or**

c. the creditor has control of the property (for example, in the case of bank accounts, the creditor has control of that account).

This is just a snapshot of what is a broad area of law and it is not intended that this article substitute for tailored legal advice particular to your circumstances.

If you need any assistance with any insolvency or PPSA related queries, please do not hesitate to contact JHK Legal.