



## BANKING & FINANCE | Issue No. 11 | 31 January 2017 Deadline for correcting transitional registrations

### January 2017

Do you have transitional registrations under the Personal Properties Security Register that have not been re-registered? If so, you should correct any registration defects before 31 January 2017, after this date the registrations will cease to be deemed to be effective. If you don't, any registration defects may cause your security to be ineffective.

The transitional provisions in the *Personal Properties Securities Act* provide that for five years from migration to the Register a registration is not defective merely because of a defect in the migrated data. That five year period ends on 31 January 2017.

This means that if you have any migrated security interests with defects in the information on the Register, you should rectify the defect before 31 January 2017, especially if the defect may be serious or misleading.

Serious or misleading defects are defects which would void a registration if made now, for example:

- the date of birth of an individual grantor is missing; or
- the ACN of a company grantor is missing or incorrect; or
- any other grantor description required by the Act, is missing or incorrect;
- the serial number of consumer property registered by serial number is missing or incorrect; or
- the description of the collateral (secured property) is seriously misleading.

Some of the readers may recall that when ASIC migrated the charges held by it to the Register, a number of the charges migrated with the grantor's ABN instead of the grantor's ACN. The Registrar corrected this on 5 June 2012, and the registrations (if now correct) should not be affected by the expiry of the transitional period on 31 January 2017.

If a defect in a registration is seriously misleading, the registration will be void. Whether a registration defect is seriously misleading is a matter of degree.

A number of transitional security interests were migrated as securities in all present and after-acquired property when they were securities over single assets such as a motor vehicle. It remains to be seen whether they are seriously misleading under the Australian law, but some of the foreign decisions regarding this subject support a view that these registrations may be defective.

If you have migrated company charges that are incorrectly described as securities over all present and after-acquired property, it may be prudent to correct the registration.

The Registrar has recommended that all security holders with migrated securities that had no end date review their registrations to ensure they are correct, and has written to affected security holders. Some registrations migrated without contact details for the secured party. If you hold a transitional security but did not get a notice from the Registrar, check if your address details are correctly noted on the Register.

Remember you have until 31 January 2017 to ensure migrated registrations are correctly registered, after that errors in the registration may affect your security.

If you are not sure about whether your registration is affected, we recommend you contact your solicitor for guidance.



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