

Corporate Finance update

No extension of 21 day charge registration time limit

The Companies Act allows the court (if it is satisfied in certain circumstances) to grant an extension of the 21 day time period within which charges and mortgages created by companies have to be registered at Companies House and to perfect the security.

It is not uncommon for this time limit to be missed potentially causing a significant threat to the validity of the bank's security.

Often it is seen by certain advisors as a 'routine matter' (but an inconvenience/unrecoverable cost) to obtain a court order and ensure that the late filed security is registered (often many years after creation of the original security), though this is incorrect. It is never by any means certain that an application to register a late filed charge will be granted by the court and the Act prescribes specific circumstances that need to be considered/satisfied for this to be the case.

This has been confirmed by the courts in a recent case of *Salvesen & Anor, Re Companies Act [2009]*. This case concerned a Scottish company (though the law is the same in England and Wales) and the Scottish Court of Session refused an application for an extension of the 21 day registration period in relation to a charge created in 2005.

The company which had created the charge had gone into administration in 2008, and the application for the extension was made over a year later in 2009.

The court considered that in a situation where the company which had created the charge had commenced formal insolvency proceedings, there would need to be exceptional circumstances (over and above any of the circumstances set out in the Act to permit late registration of a charge) to justify allowing late registration of that charge.

In the absence of any such exceptional circumstances (the court gave fraud as an example) in this case, the court did not consider it just and equitable to interfere with the statutory ranking of creditors on insolvency and so did not grant the application for the extension.

The case underscores the critical importance of ensuring that all security is validly registered and perfected in the usual way, particularly if there is any danger of the borrower entering into formal insolvency proceedings with any proximity to the creation of the bank's security.

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