



Retention of Title Clauses lose effectiveness

Reform of Australia's Personal Property Securities Law

In late 2009 the Commonwealth Government introduced the *Personal Property Securities Act 2009 (Act)*, the purpose of which was to introduce a national regime for the registration of security interests over personal property.

Whilst the Act has been passed the Personal Property Security Register will not come into effect until 1 May 2011 so it is important to understand the changes that will occur so that you have systems in place to ensure that you are not adversely affected.

Retention of Title Clauses

What is a Retention of Title Clause?

A Retention of Title Clause (also called a 'reservation of title clause' or 'Romalpa' clause) is commonly used by suppliers to retain title in the goods that they supply to a buyer until payment is made by the buyer to the supplier. The name Romalpa comes from the United Kingdom Court of Appeal case which upheld the validity of such a clause being *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 1 WLR 676.

Is a Retention of Title clause a security interest under the Act?

Section 12 of the Act sets out a definition for security interests to which the Act applies. The term is defined broadly enough so that it includes a retention of title clause.

What is the effect of Retention of Title clauses being security interests under the Act?

A retention of title clause will still be valid but will be subject to the rules of priority and the requirements of the Act. The effect of this broad definition will mean that where a supplier, supplies goods to a buyer with a retention of title clause the supplier should register their interest on the Personal Property Security Register. If this does not occur then the supplier will have a unperfected (unregistered) security interest which will be capable of being defeated by a perfected (registered) security interest if the buyer grants such an interest to a third party.

What is the effect if the buyer becomes insolvent?

The other major change will be in circumstances where a supplier supplies goods subject to a retention of title clause and the buyer is later declared bankrupt or wound up. Pursuant to the Act where a personal becomes bankrupt or a liquidator is appointed to a company the interest vests in the trustee or company voiding any unperfected (unregistered) security interest.

Registration

This means that registration of a security interest will be of critical importance to all suppliers who provide credit to ensure that they do not lose priority for the security interest over the property supplied to buyers. The register will be completely electronic and online and registration will be performed through the website and in the coming months legislation and regulations will be enacted that will govern the costs of registration of an interest.

Suppliers and providers of credit will find it critical that they understand the regime under the Act and the ramifications for their business and ensure that procedures are put in place to ensure that they do not lose their security interests due to the actions of buyer of their goods.

“Registration of a security interest will be of critical importance to all suppliers who provide credit to ensure that they do not lose priority”

Jeremy Streten
Senior Associate

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Expertise

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