



RETENTION OF TITLE OF GOODS

If you sell goods on terms you may want to try to ensure the payment of the purchase price by delaying the transfer of ownership in the goods until the buyer has paid you.

Specific wording can be inserted into the terms of trade of a business or on an invoice issued to a customer which entitles the supplier of goods to retain ownership until it has been paid in full for those goods.

Often called Romalpa Clauses, the intention of a retention of title clause is for the supplier to use the goods as a form of security for payment.

The clause should have the following elements to be effective:

- > title to the goods remains with the supplier until payment
- > the goods must be kept separate from other goods received by the debtor and marked as owned by the supplier
- > any moneys received for the sale of the goods must be held for the benefit of the supplier and paid to the supplier until the debt is paid in full
- > if the debtor fails to pay the debt the supplier can enter the premises where the goods are located and seize those goods and sell them to recover the amount of the debt still owing.

Retention of title clauses play a greater role in the protection of suppliers of goods who have not been paid for those goods.

The Associated Alloys Case held that a retention of title clause now establishes a trust between the supplier and the debtor receiving the goods.

That means that the debtor holds those goods on behalf of the supplier and any dealings by the debtor with those goods are for the benefit of the supplier and not the debtor until the supplier has been paid in full.

The High Court's decision goes even further so that any moneys that a debtor receives in respect of goods which are subject to a retention of title, even if the goods have been used in the manufacturing process to make other items, the debtor must hold those moneys on trust for the benefit of the supplier until the supplier is paid in full.

What this means in commercial terms is that a supplier who has been prudent enough to include a retention of title clause in its terms of trade is now considered to have security for the debt.

It will be in a better position than the unsecured creditors of the debtor, and it may be in a better position than some of the secured creditors of the debtor as the supplier can attach to specific goods or moneys received in respect of those goods.

Importantly, administrators, receivers and liquidators appointed to a debtor company will now have to recognise the trust relationship created by a retention of title clause between a supplier and a debtor.