

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

Retention of title clauses under the Personal Property Securities Act 2009 (Cth) – Bruce Whittaker

The *Personal Property Securities Act 2009* (Cth) (PPSA) is one of the most significant pieces of legislative reform for the Australian financial sector, and commerce generally, for many years. While the PPSA will have its greatest impact on financiers, the changes will also impact in some way on virtually all commercial enterprises. The PPSA will rewrite the legal principles that underpin *Romalpa* clauses. It will treat a sale of goods on retention of title terms as being in effect a secured loan, and the supplier will need to comply with the procedures set out in the PPSA to preserve its security position. Even if the supplier complies with those procedures, its risk position will be fundamentally different to the position under current law. For example, the purchaser will be able to grant security over those goods to third parties, and will even be able in some circumstances to dispose of the goods free of the supplier's ownership interest. This article discusses the rules that will apply to retention of title clauses once the PPSA commences operation. It concludes with a summary of the main differences between those rules and the current law.

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Incentives to position Malaysia as a leading Islamic finance hub – Jeyapalan Kasipillai and Pak Mei Sen

Higher resilience of the Islamic finance industry to the sub-prime crisis has highlighted its benefits of being a more equitable and efficient finance system compared to conventional finance systems. As the industry expands into non-Muslim or secular countries, much effort has been made to strengthen Malaysia's international interlinkages in the area of Islamic finance. Attractive tax incentives complementing Malaysian government initiatives have positioned Malaysia as a leading international Islamic finance hub. This article deliberates on the tax incentives offered by Malaysia to boost the growth of Islamic financial products, promote Islamic financial intermediaries and foster human development in Islamic finance.

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Shaping domestic laws: Why foreign direct investment is more than “tangible evidence of globalisation” – Angelique Leondis

This article analyses whether foreign direct investment (FDI) is more than just “tangible evidence of globalisation”. It considers the ways in which FDI affects the domestic laws of host countries; including host countries constructing their domestic laws to attract FDI, or to respond to threats of damages claims being made by foreign investors in the International Centre for the Settlement of Investment Disputes in reliance on bilateral investment treaties. The effect of FDI on the domestic laws of host countries highlights the excessive power that foreign investors wield over host countries. The article analyses the strategies that host countries can implement to suppress that power, including incorporating a pre-set level of incentives into a multilateral investment treaty, using a

tendering process for FDI, or enacting legislation which attaches non-negotiable conditions to FDI. It is argued that only the host countries themselves are in a position to determine which of the strategies, if any, are best suited to them.	312
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