

## **Debt collection: (2) Retention of Title**

In April 1989, the Commission published its Report on [\*Debt Collection: \(2\) Retention of Title \(LRC 28–1989\)\*](#) following a March 1987 request from the Attorney General.

“Retention of title” clauses provide that the ownership of goods remain in the seller until payment had been made. Their frequent use in modern business conditions meant that, when a sheriff effected a seizure, he would often find that the only saleable assets of the debtor consisted of goods which were immediately claimed by his suppliers as belonging to them because their bills had not been paid. The Commission made the following 12 recommendations as part of its Report:

1. A retention of title clause should not be enforceable unless it is evidenced by a note or memorandum in writing signed by or on behalf of the buyer.
2. Such a clause should not be deemed to create any form of charge unless it is expressly so stipulated at the time of the contract for sale.
3. There should be provision for the registration of retention of title clauses in a register to be maintained in the Companies’ Office.
4. Any clause not registered should be void in the event of the winding-up or bankruptcy of the buyer.
5. A valid retention of title clause should take priority over interest in the goods created subsequently to the date of registration of the retention of title clause.
6. Particulars of the clause should be registered within 21 days from the date of the relevant contract, subject to the power of the court to extend the time where it appears just and equitable to do so.
7. The register should be open for inspection by members of the public on payment of a small fee.
8. Either the buyer or the seller should be entitled to enter particulars of the retention of title clause in the register.
9. Legislation should facilitate the registration by suppliers of a single retention of title agreement covering the repeated supplying of goods over a period not exceeding five years.
10. A retention of title clause intended to secure the payment of a sum not exceeding £500 should be exempt from the registration requirements.
11. A retention of title clause should be of no effect in the event of a seizure of the relevant goods by the sheriff unless within 7 days of the giving of notice in writing by the sheriff of the seizure the seller takes the necessary preliminary steps for the winding-up or bankruptcy of the buyer.
12. The new requirements as to retention of title clauses should be applicable to all suppliers, wither companies, partnerships or individuals.

<b>Draft Legislation in Report</b>
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A draft *Sale of Goods (Amendment) Bill* is included in the Report.

**Information on Implementation**