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The Law of Secured Finance: An International Survey of Security Interests over Personal Property

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Abstract

The security interest is one of the most important devices used by financiers to manage credit risk. A financier that holds a security interest over the assets of a debtor enjoys considerable advantages over those creditors of the debtor who do not - since the security interest confers on the financier, in the event of a default by or the insolvency of the debtor, preferential rights of recourse against the assets encompassed by the security interest. By far the most important class of security interest, concerns security interests granted by companies over their personal property. The company is the dominant legal entity used for business enterprises, and a company's most valuable assets are likely to be its receivables, inventory, cash deposits, investment assets and intellectual property rights, all types of personal property. Security interests over personal property thus play an integral role in many modern financing transactions. For example, the obligations owed by a company to a financier in a multi-lender transaction (such as a loan syndication or risk participation) and to investors in structured financial products (such as asset-backed securities) are commonly supported by security interests over the company's personal property. This book discusses in detail the types of security interest that companies can grant over their personal property, and the regulation of such security interests under the laws of England and Wales, and the major common law jurisdictions of Australia, Canada and New Zealand. Reference is also made to selected material on security interests from the economically important common law jurisdictions of Hong Kong, Malaysia and Singapore. The book also examines the latest forms of security interest - such as lightweight floaters and fixed charges over fluctuating asset classes - being used by financiers, and the substitutes for security interests, principally negative pledges, retention of title clauses, set-off and flawed assets. Finally, the book considers the international initiatives of UNCITRAL and Unidroit to place cross-border security interests on a sounder footing.

Suggested Citation

Ali, Paul, 2002. "The Law of Secured Finance: An International Survey of Security Interests over Personal Property," OUP Catalogue, Oxford University Press, number 9780198299028.

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