Securing your debt if you are selling grapes or wine

In these extremely challenging times for the wine sector, growers and wineries need to be particularly careful in exposing themselves to potential bad debts. If you are selling grapes or wine on credit, you must ensure that the debt is secured.

There are various ways in which you can secure the debt. Taking security over real property is generally the safest approach, but is often impractical. Taking directors' guarantees is common in business, but may not be available to a grower or winery selling their stock.

If you are selling wine, you would be wise to do so on the basis that you retain title to the stock until you are paid in full (for that stock and all stock you have previously sold to the buyer). That means that you continue to own it and can claim against the buyer for its return, if they do not pay you. Your lawyer should draft your Wine Supply Agreement or Terms and Conditions of Sale of wine accordingly.

Such a "retention of title" arrangement is often not available to grape growers nowadays because the purchasing winery is not entitled to the WET rebate if they do not own the grapes prior to their processing. Therefore, growers should provide in the Grape Supply Agreement that the winery grants them a "security interest" in the grapes (like a charge or mortgage), to secure their debt to the grower.

If you have a security interest in your favour (whether in the nature of a "retention of title" clause or another security interest), you should register it under the *Personal Property Securities Act 2009* (Cth) (***PPSA***). If you do not, your security could be defeated by a third party creditor of the buyer (such as their bank), who might have a security interest over all of the buyer's assets, or an administrator or liquidator appointed to the buyer. Since a security interest, that secures the repayment of a debt in connection with the purchase price of assets, qualifies as a "purchase money security interest", if it is properly registered under the PPSA, it will take priority over prior registered security interests over the buyer's assets (such as an "all assets" security registered by the buyer's bank). This "super priority" is important because ordinarily the registration made first in time will have priority.

It is not difficult or expensive to register a security interest under the PPSA (about $300 generally), but it is vitally important to get the wording and timing of the registration right. You would be prudent to ask your lawyer to do this for you.

In these difficult times when "cash is king", it is critical that participants in the wine sector take a little bit of extra time and effort to protect their financial position.

Will Taylor/Lisa Calabrese
Partners
Finlaysons
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Tony Battaglene
Chief Executive
Australian Grape & Wine
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