

Satellite Update August 2018

Assignment Clauses in Satellite Contracts

SMEs set to gain from 2018 Regulations for banning prohibitions on assignment

Banning the ban

One of the most common contractual obstacles facing SME satellite manufacturers or service providers are clauses in their contracts imposing restrictions on their ability to use their payables owing under their customer invoices in order to raise finance.

Possible invoice finance opportunities frequently falter at the hurdle presented by clauses prohibiting assignment of receivables which are commonly imposed by larger and financially more powerful customers in their (often standard form) contracts.

After much deliberation over the form and content of the proposals, the latest version of the [Business Contract Terms \(Assignment of Receivables\) Regulations 2018](#), was published in July 2018.

Effect of the regulations

Any term in an English law contract entered into with a SME supplier after 31 December 2018 which imposes a condition or other restriction on the assignment of a receivable will be unenforceable.

This includes any term preventing the determination of the validity or value of the receivable or the ability to enforce the receivable and therefore encompasses terms restricting the provision of potentially sensitive commercial information relevant to assigned invoices (e.g. parties' details, amounts, VAT information, contractual delivery and performance related information, evidence of set-off or counterclaims).

To qualify for the benefits offered by the regulations, the supplier must qualify as an SME in accordance with the regulations.

It is not necessary for the supplier to be a UK entity provided it meets the stipulated SME criteria.

The contract must be for the purposes of a trade, business or profession and be related to carrying on a business in the UK.

Express exceptions and exclusions limit the effects of the regulations to SME related invoice finance for supply contracts.

Transactions concerning national security interests, petroleum licences and other specific energy related contracts are excluded.

It is not yet clear when the regulations will actually be adopted and come into effect, but, it will be interesting to see if SMEs in the satellite sector are among those which can take advantage of these changes.

***Summary:** The latest version of the Business Contract Terms (Assignment of Receivables) Regulations 2018 is a positive development for SMEs.*

The regulations will mean that any condition or restriction in a contract prohibiting the assignment of a receivable will be unenforceable. This will apply to English law contracts entered into after 31 December 2018.



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