



## INSTITUTE FOR FACTORS AND DISCOUNTERS

29 July 2009

Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Sir/Madam,

### **IFD Submission to the Inquiry Into *Personal Property Securities Bill 2009* [Provisions]**

The Institute for Factors and Discounters of Australia and New Zealand (IFD) appreciates the opportunity to make a further submission to the Inquiry, following up on our previous submission of 10 December 2008. By way of background, the IFD (membership list attached) was formed in 1994 to represent the major providers of the fast growing financial service of factoring and discounting, also known as receivables finance. Total purchases of accounts receivable by IFD members is now running at around \$60 billion per annum.

Being the major providers of accounts receivable finance in Australia, IFD members have a major interest in PPS law reform. Our members currently purchase accounts receivable, thereby acquiring title. But under PPS law title becomes irrelevant, and the current distinction between ownership and taking security over personal property ceases to apply. Instead, a receivables financier's claim to accounts will be determined by the statutory framework under the PPS law rather than by title considerations. During the policy development and the Bill's drafting stages, IFD made submissions to, and had productive discussions with, the Attorney-General's Department. We are very supportive of the consultative process that has accompanied this major reform, which will result in substantial efficiencies.

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We believe that the Bill as introduced provides the correct balance in the rights of parties with interests in securities. In particular, clause 64 (*Non-purchase money security interests in accounts*) provides equitable and clear priorities between inventory suppliers and receivables financiers.

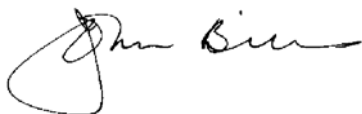
On the one hand, the inventory supplier's security interest would continue in the goods until they were sold, which results in the creation of accounts receivable. This interest in the accounts receivable continues until those receivables are purchased by the receivables financier, at which time the inventory supplier's security interest is transferred to the money that flows to the seller from the sale of the accounts receivable. On the other hand, the receivables financier's interest in the accounts receivable appropriately takes priority once the accounts receivable are purchased (i.e. at the same time as the inventory supplier's interest transfers to the money paid to the seller).

The requirements for five business days notice enables the inventory financier to take appropriate action in relation to its priority. The inventory financier will have a PMSI in the proceeds of the inventory and the new value received by the grantor on the transfer of the account.

The IFD believes this is an equitable and commercially logical outcome, and entirely consistent with the PPS framework in relation to priorities and the injection of new value.

The IFD supports these provisions in the *Personal Property Securities Bill 2009*.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Bills". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

**JOHN BILLS**  
Executive Officer

**IFD MEMBERS**

Bank of Queensland  
Bibby Financial Services  
Cashflow Finance Australia  
Cash Resources Australia  
Coface Finance (Australia)  
Commonwealth Bank  
HSBC Bank Australia  
National Australia Bank  
Oxford Funding  
Scottish Pacific Benchmark  
St. George Bank  
Westpac Banking Corporation

**Associate Members**

Commercial Factors  
Easy Factors International  
Key Factors Finance  
Lock Finance  
Pacific Invoice Finance  
Scottish Pacific Business Finance NZ

**Affiliate Members**

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dancerace  
GlobalX Information Services  
Henry Davis York  
HPD Software Asia Pacific  
Ingenuity Systems  
Lowe Lippmann  
National Credit Insurance  
Piper Alderman  
Polczynski Lawyers  
PPB  
Stellar Recoveries  
Taylor Woodings  
Trace Personnel  
Veda Advantage