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Our ref:

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Ms Julie Dennett
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
CANBERRA ACT 2600

Dear Ms Dennett

**INQUIRY INTO PERSONAL PROPERTY SECURITIES AMENDMENT
(REGISTRATION COMMENCEMENT) BILL 2011 (BILL)**

Thank you for inviting us to make a submission in respect of the above inquiry.

BACKGROUND

The changes proposed in the Bill provide the Attorney General (being the relevant Minister) with a discretion to delay the migration time and registration commencement time (RCT) currently provided for in the *Personal Property Securities Act 2009* (Cth) (PPSA).

In the absence of such amendment, and in the absence of the Attorney General making a determination to bring forward the migration time and RCT, the PPSA currently provides for the migration time to be on Sunday 1 January 2012, with the RCT to be Wednesday 1 February 2012.

We understand that any proposed delay beyond these dates would be due to the need to ensure that all systems relevant to the effective and seamless operation of the Personal Property Securities Register (PPSR) are in place.

The reform effected by the PPSA is substantial and has significant impact on the commercial community. The breadth of the PPSA means that it is not only relevant to financiers but extends to manufacturers, distributors and suppliers who operate on a retention of title basis, lessors, bailors and consignors (who have previously relied on their title to the assets provided to their customers as security) and any commercial transaction which involves 'security interests' as provided for by the PPSA.

In our view, other than for significant financiers (including lessors, bailors and consignors) and significant manufacturers, suppliers and distributors, there is little understanding of the impact of the PPSA on commercial transactions in the community.

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For those participants in the markets who are aware of PPSA, significant amounts of money and time have been expended in getting their procedures and documents 'PPSA ready' so that upon commencement of the PPSA, their day to day business will not be disrupted.

BENEFITS OF AMENDMENT

For those who have not already undertaken a review of their business so as to ensure that they will be PPSA ready by the RCT, a further period of time in order to do so would be welcome. For those who are essentially ready to comply with the PPSA, certainty as to when it is to commence is critical.

The primary objective of the Bill should be to ensure that a mechanism is in place which will result in a fully operational, error free PPSR as from the RCT. The Government should retain flexibility under section 306(4) to make a further determination of the RCT at any time up to the actual RCT, if last minute errors or system failures become apparent during the migration period.

If the PPSA was to commence as currently provided by the legislation, significant resources would need to be dedicated over the Christmas/New Year period to ensure that all final testing is completed prior to both the migration time and the RCT. As traditionally there are significant staff absences during this period, we do not believe that a migration time of 1 January 2012 and a RCT of 1 February 2012 is practical. Clients of ours have indicated that they were happy to accept the previously anticipated start dates in October this year but are not as comfortable with commencement dates as provided by the legislation.

Not only will the inclusion of a mechanism to extend the migration time and RCT provide those entities who have not undertaken the work required to become PPSA ready a further period of time in which to do so, it will also minimise the costs of deploying additional staff over the holiday period for those entities who are ready for the PPSA.

COMMENTS ON BILL

For these reasons, we support the Bill but do so on the basis that the Attorney General will exercise his discretion to determine both a migration time and a RCT (that can be later than one month after the migration time) to a date some time in the first quarter of 2012, but after the end of the traditional holiday period, which ends in late January (when school commences).

At the moment, a determination by the Attorney General of both the migration time and the RCT is required to give the Attorney General the further safety valve under section 306(4). We recommend that section 306(4) be amended so that the Attorney General can make a further determination of the RCT, whether or not he has made any prior determinations in respect of either or both of the migration time and the RCT.

By including such amendment and therefore flexibility to delay the commencement date to some time in the first quarter, the Attorney General will have a further period of time to satisfactorily complete all testing of the PPSR to ensure smooth operation.

The commencement of the PPSA should occur on a Monday (as has always been contemplated) as this will assist in ensuring that the migration process is complete and accurate. The migration



process contemplates the transfer of data from existing registers onto the PPSR. If such registrations are able to continue up until the day before the PPSR starts, it is likely that there will be data which will not be transferred onto the PPSR from the RCT. By having the RCT start on a Monday, this will allow the Attorney General's Department and ITSA (the body charged with the administration of the PPSA) further time to effect migration of all remaining data onto the PPSR in preparation for its commencement.

In our view, the commercial community has not appreciated the continual delays relating to the migration time and RCT for the PPSA and would expect that any further announcement of these times will be adhered to (provided the PPSR is working effectively). The abovementioned amendments will maximise the opportunity for this to be the case.

We would be happy to discuss our comments above with you and look forward to receiving advice as to the outcome of your inquiry.

Yours sincerely

Peter Faludi
Special Counsel