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23 January 2009

Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Sirs

**Inquiry into the Personal Property Securities Bill 2008 [Exposure Draft] (Revised Bill)**

I refer to our appearance at the Inquiry in Sydney on 22 January 2009 and in particular to the request of Senator Trood to advise the Committee of those issues raised in our Submission to the Committee dated 9 December 2008 (and our Addendum to our Submission dated 22 January 2009) which relates to provisions contained in the Revised Bill which did not appear in the original Consultation Bill.

We have undertaken this exercise and **enclose** a Schedule which indicates such matters.

We have previously provided to our clients a Comparative Table which cross references section numbers in the Consultation Bill against the equivalent sections in the Revised Bill. We understand that such comparative table has not been prepared by the Attorney -General's Department and have been advised by a number of our clients and also the Australian Bankers Association that the Comparative Table was of great assistance to them in comparing the Consultation Draft against the Revised Bill. Accordingly, to assist the Committee in reviewing our Submission and considering the changes made by the Revised Bill, we **enclose** a copy of the Newsletter prepared by us in November which contains such Comparative Table.

**Impact on Leasing Industry**

One of the significant matters raised in our Submission and discussed during our appearance at the Committee hearing relates to the impact of the Revised Bill on the leasing industry. To assist the Committee consider the issues raised in our Submission (and those of others), we would like to also refer to section 5 of the

Revised Bill (which is the same as section 5 on the Consultation Draft). This section provides that:

*'The fact that title to collateral is in a secured party rather than a grantor does not affect the application of any provision of this Act relating to rights, obligations and remedies.'*

If the Committee were to determine that it is not appropriate for lessors to potentially lose their title and ownership to leased property as a result of the operation of the Bill, this section will need to be removed or modified (in addition to the other provisions of the Revised Bill which are relevant).

### **Constructive notice of registration**

During our appearance at the Inquiry, Senator Trood asked us to consider whether or not deemed knowledge of security interests which appear on the Register should apply and whether this would overcome a number of the concerns we have raised in our Submission.

In response to Senator Trood's request, we indicated that we thought that it would and as a result a security holder who registers his interest in the register (and thereby perfects its security interests) should not be able to lose its priority.

We acknowledge however that there are a number of types of personal property (being controllable property) where perfection of a security interest can occur other than by registration. Given the nature of such controllable property, it may be impractical for security holders to register their security interest over such personal property. We are not suggesting that registration should apply to such controllable property (although it is always an option for a security holder to effect registration) and we are less concerned with the absence of knowledge of the existence of the security interest in cases where such security interests are not registered as having control over such personal property will substantially reduce the opportunity for unauthorised dealings to occur in relation to the property.

We thought this would assist the Committee in considering the comments made by us in our Submission and at the hearing in relation to constructive knowledge and the impact of registration.

We also thought it would assist the Committee to refer it to section 57 of the Revised Bill which, depending on how the Committee proceeds in relation to the suggestion of constructive knowledge, may need to be deleted or amended.



We appreciate having been provided with the opportunity to provide our thoughts on this significant reform to the Committee and are happy to provide any further assistance or clarify any further matters which the Committee may require.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Faludi'.

**Peter Faludi**

Special Counsel

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Encl

## **Schedule**

**List of comments raised in DLA Phillips Fox Submission (and Addendum to Submission) which relate to provisions found in the Revised Bill (and not in the Consultation Bill).**

For the purpose of this Schedule, paragraph numbers are the same as the numbers contained in the documents being referred to.

### **Covering letter to Committee dated 9 December 2008**

2.       References to section 42(1)(d) and section 54.
- 4.
- 7.
8.       In relation to section 21.
- 9.
- 10.
11.      In relation to amendments to section 56.
- 12.
- 18.
- 25.

### **Schedule of detailed comments attached to letter to Committee of 9 December 2008**

- 1.
2.       In relation to section 21.
- 4.
- 5.
- 6.
- 8.

9.

11.

13.

14.

15.

16.

23.

24.

**Addendum to Submission from DLA Phillips Fox dated 22 January 2009**

Comments relating to Impact on Leasing Industry.