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L A W Y E R S

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The Senate Standing Committee on Legal and Constitutional Affairs  
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Dear Sirs

**Comments on the Personal Property Securities (Corporations and other Amendments) Bill 2010**

Thank you for this opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Personal Property Securities (Corporations and other Amendments) Bill 2010 (the **Bill**).

The focus of this submission is on the transitional provisions in the Bill and, in particular, the absence of enforcement rights given to the holders of transitional security interests which are not migrated security interests. Our detailed submission is enclosed.

Please note that the views expressed in this submission are the views of the authors and are not the views of any client of Gilbert + Tobin.

Yours Sincerely

**Duncan McGrath**  
Partner

**Benjamin Downie**  
Senior Lawyer

**Comments on the Personal Property Securities (Corporations and other Amendments) Bill 2010**

**Schedule 2 – Amendments to the Personal Property Securities Act 2009 (the “Act”)**

- 1.1 A transitional security interest as defined in section 308 of the Act includes a security interest provided for by a transitional security agreement which arises before the registration commencement time as if the Act would have applied to the security interest had the Act been in force before the registration commencement time. The transitional regime therefore applies to interests which are currently not considered to be security interests but which will become transitional security interests by virtue of the Act such as a bailment of goods under a PPS lease or a commercial consignment of goods which arise under a security agreement entered into prior to the registration commencement time and which remains in force after that time.
- 1.2 If such a transitional security interest is not otherwise perfected by the end of the 24th month following the registration commencement time it will become an unperfected security interest and the collateral will vest in the grantor in the circumstances provided for in section 267 of the Act. We acknowledge the statutory right to damages given to consignors under a commercial consignment, lessors and bailors under section 269 of the Act in these circumstances but note that where the grantor is insolvent this may be of limited comfort to them.
- 1.3 Further, section 311 of the Act does not assist holders of such transitional security interests as it provides only that a transitional security interest is enforceable against a third party if it would have been so enforceable under the law that applied to the enforceability of security interests immediately before the registration commencement time. As those particular transitional security interests were not security interests prior to the registration commencement time (such security interests only being created by the Act) no such law would have applied to them. Section 314 does not assist either as it ensures that the enforcement regime under Chapter 4 of the Act is not available to holders of such transitional security interests.
- 1.4 Therefore, while the Act incentivizes holders of such transitional security interests to register them in order to preserve their priority and mitigate the risks posed by sections 267 and 311 of the Act, the effect of section 314 of the Act is to render the priority afforded by the Act to the holders of such transitional security interest somewhat illusory. We submit that the Bill should be amended to enable holders of such transitional security interests to avail themselves of the enforcement regime in Chapter 4.