

**EXPLANATORY NOTES TO THE  
DRAFT IMPLEMENTING RULES AND REGULATIONS OF THE  
PERSONAL PROPERTY SECURITY ACT (REP. ACT NO. 11057)**

**RULE I (PRELIMINARY PROVISIONS)**

*Section 1.05 (Definitions)*

The table below identifies the sources of the definitions listed in the Rules.

<b>Defined Term</b>	<b>Source</b>
Commodity contract	Sec. 3(a) of the Personal Property Security Act (“PPSA”)
Competing claimant	Art. 2(e), UNCITRAL Model Law on Secured Transactions (“UNCITRAL Model Law”)
Control agreement	Sec. 3(b) of PPSA
Consumer goods	Art. 2(f), UNCITRAL Model Law
Default	Art. 2(j), UNCITRAL Model Law
Deposit accounts	See “Deposit-taking institution”
Deposit-taking institution	Reference to the definition of a “bank” under Sec. 3.1 of RA 8791 (The General Banking Law of 2000)
Equipment	Art. 2(l), UNCITRAL Model Law
Fixture	Based on Art. 415, Civil Code
Grantor	Sec. 3(c) of PPSA
Intangible asset	Proposed by drafters
Intellectual property	Section 4.1, Intellectual Property Code
Intermediary	Sec. 8-102(14), Uniform Commercial Code (US)
Intermediated securities	Defined based on Sec. 3(d) of PPSA
Inventory	Art. 2(q), UNCITRAL Model Law

Investment property	Proposed by drafters
Lien	Proposed by drafters
Non-intermediated securities	See “Intermediated Securities”
Notice	Sec. 3(e) of PPSA
Operating lease	Proposed by drafters
Perfection	Proposed by drafters
Possession	Art. 523, Civil Code
Priority	Art. 2(aa), UNCITRAL Model Law
Proceeds	Sec. 3(f) of PPSA
Product	Art. 2(cc), UNCITRAL Model Law
Purchase money security interest	Sec. 3(g) of PPSA
Receivable	Art. 2(dd), UNCITRAL Model Law
Recognized market	From UNCITRAL Model Law Guide to Enactment (p. 137)
Registration	Proposed by drafters
Registry	Sec. 3(h) of PPSA
Secured creditor	Art. 3(i) of PPSA
Securities account	Art. 2(ii), UNCITRAL Model Law
Security	Sec. 3.1 of RA 8799 (Securities Regulation Code)
Security interest	Sec. 3(j) of PPSA
Tangible asset	Based in part on Art. 2(ll), UNCITRAL Model Law
Writing	Sec. 3(k) of PPSA

## **RULE II (PRELIMINARY PROVISIONS)**

### *Section 2.01 (Scope)*

As the PPSA specifically excludes interests in aircraft and in ships, security interests over those two types of movables are not governed by the PPSA.

### *Section 2.02 (Forms of Security Arrangements)*

The PPSA does not prevent contracting parties from creating security arrangements that take on the characteristics of previously-recognized arrangements such as pledge and chattel mortgage, provided that the particular arrangement is not inconsistent with the PPSA or the Rules. However, the Civil Code provisions establishing arrangements such as pledge and chattel mortgage have been repealed, thus it is now the PPSA that governs these types of arrangements.

### *Section 2.03 (Security Interests in Personal Property)*

Section 2.03 provides for illustrative examples of types of personal property over which security interests may be created to highlight the expanded scope referred to in Section 2.01

### **RULE III (CREATION OF SECURITY INTEREST)**

#### *Section 3.01 (Creation of Security Interest)*

A security interest is created by the outright sale of an account receivable, or the lease of an operating lease for not less than one (1) year. This is consonant with Article 1 of the UNCITRAL Model Law.

#### *Section 3.05(b) (Security Interests Over Future Property)*

A security interest over a tangible asset that is transformed into a product does not automatically extend to the product unless specifically provided in the security agreement, since “products” are not referred to in Section 8 of the PPSA (Right to Proceeds and Commingled Funds and Money) The extension of security interests over products may occur instead pursuant to the option to create security interests over future property under Section 5 of the PPSA.

#### *Section 3.09 (Protection of Account Debtor)*

This provision is adopted from Article 61(1) of the UNCITRAL Model Law so as to more explicitly protect the right of the debtor of the receivable under the contract that gave rise to the receivable.

#### *Section 3.10 (Rights to Payment of Funds Credited to a Bank Account)*

The provision is adopted from Article 15 of the UNCITRAL Model Law.

#### *Section 3.11 (Tangible Assets with Respect to which Intellectual Property Is Used)*

The provision is adopted from Article 17 of the UNCITRAL Model Law.

#### *Section 3.12 (Extinguishment of Security Interest)*

The provision is adopted from Article 12 of the UNCITRAL Model Law.

## **RULE IV (PERFECTION OF SECURITY INTEREST)**

### *Section 4.02(b) (Means of Perfection - Tangible Assets)*

The contemplation of a depositary acting for the secured creditor was taken from the UNCITRAL Model Law. Constructive possession may happen when the secured creditor is holding the keys of a warehouse filled with inventory (analogous with constructive delivery in sales).

### *Section 4.05 (Perfection of Security Interest in Electronic Securities)*

The Section only applies to electronic securities not held with an intermediary. In the case of electronic securities held with an intermediary, the general rule provided for intangible assets (Section 4.03) shall apply.

### *Section 4.08(b) (Disposition of Perfected Security Interest Before Default)*

The clause “before default” was added to distinguish this section from post-default disposition covered by Rule VI.

## **RULE V (REGISTRY)**

### *Details of Registry*

The Rule is confined to the general features of the Registry; any technical detail implementing the listed features are best left for determination by the builder of the registry.

### *Section 5.05(a)(v) (Sufficiency of Notice)*

The notice must state the duration of effectivity of the notice. This mandatory requirement is consistent with Section 30 (b) of the PPSA, which limits the effectivity of the notice to the duration stated therein.

### *Section 5.07 (Effectiveness of Notice)*

Priority of security interests under the PPSA are determined by the type of security and manner of perfection. Hence, it is essential to determine the type of security interest based on the description stated in the notice. A false or erroneous description can lead to a mistaken priority of security interest. The last paragraph of the Section emphasizes that the original security agreement governs the priority right, notwithstanding any erroneous or false description in the notice.

### *Section 5.08 (Amendment of Notice)*

Section 5.08 identifies the parties who can file an amendatory notice, and reflects the option to file an amendment notice under Section 16 of the PPSA if a secured creditor assigns a perfected security interest.

### *Section 5.10 (Compulsory Amendment by Court Order)*

The final paragraph of Section 5.10 reiterates that a person who sustains damage as a result of an erroneous or false description in the notice may bring an action for recovery of damages with the proper court, as well as seek an order from the same court for the correction of the error or notice.

### *Section 5.16 (Public Record)*

Notices of public disposition under the Rule on Enforcement shall now be published in the Registry itself.

### *Section 5.19 (Correction of Errors)*

Section 5.19 is based on Article 31 of the UNCITRAL Model Law and specifically refers to a procedure for the correction by the Registry of any errors or omissions it may have committed.

*Section 5.20 (False or Misleading Information)*

Section 5.20 reiterates by way of warning that the entry of false or misleading information in records entered in the Registry may lead to prosecution under the Cybercrime Prevention Act of 2012.

## **RULE VI (PRIORITY OF SECURITY INTEREST)**

### *Section 6.01 (Time of Perfection)*

While the counterpart PPSA provision (Section 17) is denominated as “Time of Registration”, the Rules use “Time of Perfection” because the provision concerns the general rule applicable as well to perfection through means other than registration.

### *Section 6.04(b) (By Operation of Law)*

The first paragraph of Section 6.04(b) is a restatement of Section 22 of the PPSA. The reference to “the applicable insolvency law” indicates legislative intent that Congress did not intend to abandon the preferences of credit.

The second paragraph of Section 6.04(b) clarifies the necessary effect of a security interest in a collateral upon insolvency proceedings. It is analogous to a specific preferred credit of pledge in the old law.



**RULE VII**  
**(ENFORCEMENT OF SECURITY INTERESTS**  
**AND SECURED CREDITOR'S RIGHTS)**

*Section 7.01 (Enforcement With or Without Judicial Process)*

In case that the collateral is disposed of under judicial authorization, it is appropriate that the Supreme Court provide for the procedural guidelines for such disposition. The guidelines for extra-judicial disposition are provided in Section 7.09.

*Section 7.03(c) (Breach of Peace)*

Under the PPSA, a collateral may be possessed as long as there is no breach of the peace, i.e., no act of trespass, physical violence or intimidation from the secured creditor, or participation by a law enforcement officer. Since the PPSA does not require prior judicial authorization for repossession, Section 7.03(c) clarifies that personal property or equipment may also be repossessed without the knowledge of the grantor as long as there is no breach of peace.

*Section 7.05 (Recovery in Special Cases)*

Section 7.05 requires a copy of the security agreement and an affidavit from the secured party to be provided to the deposit-taking institution when instructing it to pay the balance of the deposit account to the secured creditor. This requirement helps protect the interests of the account holder and the deposit-taking institution.

*Section 7.08 (b) (Notification of Dispositions)*

Section 7.08 provides that a waiver to the right to be notified of the disposition should only be valid when done after default. As explained by the UNCITRAL Legislative Guide, some States permit grantors and other obligors to waive procedural requirements, but only after default. This is to avoid grantors being pressured to waive their rights in order to obtain credit, and to ensure that the grantor's decision to waive its rights is made due to the circumstances at the time of default.

*Section 7.09 (Guidelines on Private or Public Disposition)*

Section 7.09 imposes minimum guidelines for the disposition of the collateral, guided by the principles of good faith and the commercial reasonableness requirement imposed by the PPSA. The sale shall be through public auction, and preceded by a mandatory notice that is posted with the Registry. There is leeway granted as to the procedure to be followed during the sale, with subsection (d) listing indicators that may be taken into account in determining the good faith and commercial reasonableness requirements are met. If the sale is conducted through an established procedure that have been previously approved by the DOF, or through a method of disposition that has been approved in any legal proceeding, then the disposition shall be conclusively presumed to be commercially reasonable.

#### *Section 7.10 (Right of Redemption)*

Section 7.10, similar to Section 7.08(b), provides that the waiver to the right to be notified of the disposition should only be valid when done after default. As explained by the UNCITRAL Legislative Guide, some States permit grantors and other obligors to waive procedural requirements, but only after default. This is to avoid grantors being pressured to waive their rights in order to obtain credit, and to ensure that the grantor's decision to waive its rights is made due to the circumstances at the time of default.

#### *Section 7.13 (Retention of Collateral by Secured Creditor)*

Subparagraph (c), which contains the contents of the proposal to retain the collateral is adopted from Article 80 of the UNCITRAL Model Law. Considering that any of the persons listed in subparagraph (a) is entitled to object to the proposal, the requirements for the sufficiency of the proposal ensures that said persons are adequately informed about the nature and consequences of the proposal.

#### *Section 7.14 (Remedies for Secured Party's Failure to Comply with the Rules)*

The listed remedies can already be gleaned from the provisions of the PPSA, but they are restated for the benefit the interested parties. Damages can also be claimed in the amount of any loss caused by a failure to comply with these rules. The persons entitled to such remedies are the debtor, grantor or any other person that held a security interest in or other lien on the collateral. This is based on § 9-625 Art. 9 UCC and Art. 74 MLST.

## EXPLANATORY NOTES TO RULE VIII (PRIOR INTERESTS)

### *Transitional Period*

Considering that Section 67 of the PPSA states without qualification that the PPSA shall take effect fifteen (15) days after publication in at least two newspapers of general circulation, the Rules now consider the PPSA as in effect as of 9 February 2019, or fifteen (15) days after the PPSA was published in two newspapers of general circulation. While the implementation of the PPSA is conditioned upon the Registry being established and operational (see Sec. 68, PPSA), the PPSA also contemplates a transitional period defined as the period from the date of effectivity of this Act until the date when the Registry has been established and operational. Only the Registry (and the ability to perfect security interests through registration) are suspended in implementation. The transitional period has begun as of 9 February 2019.

Enforcing the transition period despite the absence of the Registry is more consonant with legislative intent, notwithstanding any resulting practical difficulties. This Rule was drafted precisely to address the concerns that would arise during this transition period, when the ability to perfect security interests would be limited.

## EXPLANATORY NOTES TO RULE IX (LAWS REPEALED AND AMENDED)

### *Implied Repeal by Substitution*

Section 66 of the PPSA (“Repealing Clause”), declares that all laws, decrees, orders, and issuances or portions thereof, which are inconsistent with the PPSA, are hereby repealed, amended, or modified accordingly. Notwithstanding the use of “repealed, amended or modified accordingly”, the provision is interpreted, to resolve doubt, as effecting an implied repeal by substitution. Section 9.01 of the Rules was drafted to effect such implied repeal by substitution.

This interpretation is consistent with the underlying philosophy of the PPSA to establish a “unified and modern legal framework for securing obligations with personal property”. “Unified” here means that the PPSA recognizes the existence of disparate regimes of movable collateral, and that it intends to bring them all together, and unify them under a single regime. “Modern” suggests a departure from the traditional security arrangements. “Legal framework” shows that the PPSA intends to establish not just a set of rules, but rather an entire system in itself.

Implied repeal by substitution is extensively discussed in *Mecano v. COA* (G.R. No. 103982, 11 December 1992). To wit:

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.

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We come now to the second category of repeal — the enactment of a statute revising or codifying the former laws on the whole subject matter. This is only possible if the revised statute or code was intended to cover the whole subject to be a complete and perfect system in itself. It is the rule that a subsequent statute is deemed to repeal a prior law if the former revises the

whole subject matter of the former statute. When both intent and scope clearly evidence the idea of a repeal, then all parts and provisions of the prior act that are omitted from the revised act are deemed repealed. Furthermore, before there can be an implied repeal under this category, it must be the clear intent of the legislature that the later act be the substitute to the prior act. (emphasis added)

An implied repeal by inconsistency requires that the later law be read together with the prior law, and that every effort must be made to harmonize the two and make them both stand, in accordance with the time-honored principle of *ut res magis*. On the other hand, **in an implied repeal by substitution, the parts of the prior law which are not reproduced in the later law are deemed repealed, the later law being a complete enactment of its subject matter and regarded as the expression of the whole law thereon** (also see *Joaquin v. Navarro*, G.R. No. L-576, 4 August 1948).

#### *Sec. 9.01 (Repealing Clause)*

Following the position of Implied Repeal by Substitution, the statutory provisions enumerated in Section 66 of the PPSA, as restated in Section 9.01(a) of the Rules, are deemed as repealed as these are now inconsistent with the PPSA.

The statutory provisions listed in Section 9.01(b) are not considered as repealed in full, but only insofar as they are inconsistent with the PPSA. The general functions of the Registers of Deeds as established in Section 10 of P.D. 1529 remain insofar as real property is concerned. Article 2127 of the Civil Code remains applicable insofar as mortgages on immovables are concerned.

The reference to “the applicable insolvency law” indicates legislative intent that Congress did not intend to entirely abandon the preferences of credit under Articles 2241, 2243, and 2246-2247. Further, the order of preferences under these provisions would still apply in the absence of any security interests created and perfected over movable property.