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Chapter 19

Secured Transactions Act

[Header A: SECURED TRANSACTIONS ACT 11 PNCA § 1903

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Subchapter I

General Provisions

§ 1901. Short title.

§ 1902. Purpose and construction.

§ 1903. Definitions.

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§ 1901. Short title.

This chapter shall be known as and may be cited as the “Secured Transactions Act of 2011”, or simply: the “Secured Transactions Act.”

Source

RPPL 8-42 § 2, modified.

§ 1902. Purpose and construction.

(a) The purpose of this chapter is to promote commerce by facilitating business and consumer credit with respect to the attachment, perfection, and enforcement of security interests in personal property, and related transactions.

(b) If there is a conflict between a provision of this chapter and any other law or rule, this chapter shall govern unless the other law or rule specifically states that the other law governs or expressly amends the conflicting provision of this chapter.

Source

RPPL 8-42 § 3, modified.

§ 1903. Definitions.

In this chapter, unless the context otherwise requires:

(a) “Accession” means goods that are physically united with other goods in a manner such that the identity of the goods is not lost.

[Footer B: Supp. 8 11 - 190]

[Header B: **11 PNCA § 1903** **BUSINESS & BUSINESS REGULATION**

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(b) “Account” means:

(1) A right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued; or

(D) for a secondary obligation incurred or to be incurred.

(2) However, the term “account” shall not include:

(A) rights to payment evidenced by chattel paper or an instrument;

(B) cash and deposit accounts; or

(C) letters of credit or rights to payment or performance under a letter of credit.

(c) “Account debtor” means the person that is obligated on an account, chattel paper, or other intangible property.

(d) “As-extracted collateral” means:

(1) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(2) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(e) “Buyer in the ordinary course of business” means a person that buys goods in good faith, without actual knowledge that the sale violates the rights of another person in the goods, in the ordinary course of business from a person other than a pawnbroker in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices.

(f) “Cash proceeds” means proceeds that are money, checks, deposit accounts, and the like.

(g) “Chattel paper” means a record that creates or evidences a debt and a security interest in, or a lease of, specific goods.

(h) “Commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(i) “Commission” means the Palau Financial Services Authority.

(j) “Consignment” means a transaction, regardless of the form or terminology used in the agreement, in which a person (the consignor) delivers goods for the purpose of sale to a merchant (the consignee) that deals in goods of that kind under a name other than that of the consignor and that is not an auctioneer, but the term excludes transactions involving goods that are consumer goods of the deliverer.

(k) “Consumer goods” means goods used or bought for use primarily for personal, family, or household purposes. However, the term shall not include a motor vehicle.

(l) “Debtor” means the person that has rights in collateral, and includes the seller of accounts or chattel paper, and the lessee or consignee of goods that are collateral.

(m) “Default” means the failure to pay or otherwise perform the obligation secured when due, or the occurrence of any event or set of circumstances on which, pursuant to the terms of the security agreement, the security interest becomes enforceable.

(n) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank.

(o) “Document” means a document of title, or a receipt such as a bill of lading or warehouse receipt, issued by a person in the business of transporting or storing goods.

(p) “Equipment” means goods that are not inventory, consumer goods, farm products, timber to be cut or minerals before extraction.

(q) “Entity” means a body with capacity to contract other than a natural person or a foreign entity.

(r) “Farm products” means goods produced or to be produced by a debtor engaged in farming, other than timber, that are:

(1) crops grown, growing, or to be grown;

(2) aquatic goods produced or to be produced in aquacultural operations;

(3) livestock, including the unborn;

(4) supplies used or produced, or to be used or produced, in a farming operation; or

(5) products of crops or livestock in their un-manufactured state.

(s) “Filing office” means the office established in subchapter V of this chapter.

(t) “Fixture” means goods that are fixed or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under real property law or the law on mortgage, but does not include building materials and readily removable factory machines, office machines and domestic appliances.

(u) “Foreign entity” means a body with capacity to contract, organized or authorized under law other than the law of Palau.

(v) “Goods” means personal property that are equipment, inventory, farm products, consumer goods, fixtures, timber to be cut, and minerals subject to a security interest in as-extracted collateral. The term shall not include accounts or chattel paper, money, documents, or instruments.

(w) “Guarantee” means a secondary obligation that consists of an obligation to pay, or an issuer’s obligation to pay under a letter of credit, and that supports the payment on an account, chattel paper, document, instrument, or other intangible property.

(x) “Initial notice” means the notice to which an amendment, continuation statement, or termination statement may relate.

(y) “Instrument” means a negotiable instrument, including a writing that evidences a right to the payment of money that is not itself a security agreement or lease, but that is a type of which is, in the ordinary course of business, transferred by delivery with any necessary endorsement or

assignment, and the term includes a share in a company or a bond, if the share or bond is evidenced by a writing.

(z) “Inventory” means goods other than farm products that are:

(1) held or to be held for sale;

(2) leased or held for lease; or

(3) raw materials, work in process, or materials used or consumed in a business.

(aa) “Lease of goods for a period greater than one year” means:

(1) a lease of goods for a stated duration of more than one year;

(2) a lease of goods for an indefinite term;

(3) a lease of goods for an initial term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one year after the lessee first acquired possession of the goods, but the lease does not become a lease for a term of more than one year until the lessee’s possession extends beyond one year; or

(4) a lease of goods for a term of one year or less where the lease provides that it is renewable for any period that would cause the actual term of the lease to exceed one year.

(bb) “Lessee of goods in the ordinary course of business” means a person that, in good faith and without actual knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in the ordinary course from a person in the business of leasing goods of that kind.

(cc) “Lien holder” means:

(1) a person that obtains a judgment that acknowledges or creates a debt in that person’s favor;

(2) a liquidator or receiver appointed or approved by a court; or

(3) any other person that obtains a right in collateral by operation of law other than a person that holds a right of retention as provided in this chapter.

(dd) “Motor vehicle” means an automobile or truck that has been issued a serial number, when held by the debtor as equipment, but not as inventory.

(ee) “Notice” means a record filed or presented for filing in the filing office.

(ff) “Other intangible property” means any personal property other than goods, accounts, chattel paper, documents, instruments, and money.

(gg) “Proceeds” means:

(1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed with respect to, collateral;

(3) rights arising out of collateral;

(4) to the extent of the value of collateral, claims arising out of the loss or nonconformity of, defects in, or damage to the collateral; and

(5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(hh) "Purchase" means to take collateral as a buyer, a donee, a person receiving security such as a secured party, consignor, lessor, or mortgagee, or by any other voluntary transaction creating an interest in property.

(ii) "Purchase-money security interest" means a security interest that is:

(1) taken or retained by the seller of goods to secure all or part of its purchase price; or

(2) taken by a person other than the seller that gives value to enable the debtor to acquire rights in or the use of goods, if such value is in fact so used.

(jj) "Purchaser" means a person that takes collateral by purchase.

(kk) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The term includes a photocopy, facsimile copy, and electronic mail.

(ll) "Secured party" means a lender, seller or other person in whose favor a security interest is created or provided for under a security agreement, including a person to whom accounts or

chattel paper have been sold, and a consignor or lessor of goods, including the representative of any such person or groups of persons.

(mm) “Security agreement” means an agreement that creates or provides for a security interest.

(nn) “Security interest” means a property right in collateral that secures performance of an obligation.

(oo) “Serial number” means the 17-character vehicle identification number assigned by the manufacturer in accordance with standards promulgated by the International Organization for Standardization.

(pp) “Sign” means:

(1) to physically execute a signature; or

(2) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent to identify the person and adopt or accept a record.

(qq) “Unless otherwise agreed” means unless the secured party and the debtor agree otherwise.

(rr) “Value” means the rights a person acquires:

(1) in return for a binding commitment to give credit, whether or not drawn upon;

(2) as security for or satisfaction of a pre-existing claim, in whole or in part;

(3) by accepting delivery pursuant to a pre-existing contract for purchase;

(4) in return for anything given in exchange; or

(5) any promise.

Source

RPPL 8-42 § 4, modified.

§ 1904. Scope.

(a) This chapter shall apply to:

(1) all transactions where the effect is to secure an obligation with collateral, including pledge, retention of title, chattel mortgage, assignment, and the like;

(2) the sale of accounts and chattel paper;

(3) consignments;

(4) the lease of goods for a period greater than one year; and

(5) the interest of a lien holder in collateral.

(b) This chapter shall apply without regard to the form of an agreement or the terminology used in an agreement, and whether ownership of the collateral is held by the secured party or the debtor. The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.

Source

RPPL 8-42 § 5, modified.

§ 1905. Exclusions.

(a) Notwithstanding section 1904, this chapter shall not apply to any of the following:

(1) The transfer of an interest in real property, except as provided with respect to fixtures, crops, timber to be cut, or minerals before extraction.

(2) The transfer of a claim for compensation of an employee.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1911**

]

(3) A sale of accounts or chattel paper as part of a sale of the business out of which they arose.

(4) An assignment of accounts, chattel paper, or instruments for the purpose of collection only.

(5) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(6) The transfer of an interest in a ship in which a mortgage is subject to registration under another law of Palau.

Source

RPPL 8-42 § 6, modified.

Subchapter II

Security Interests and Secured Obligations

§ 1911. Security interest.

§ 1912. Nature of a purchased-money security interest.

§ 1913. Secured obligation.

§ 1914. Collateral.

§ 1915. Collateral description in security agreement or notice.

§ 1916. Effectiveness of security agreement.

§ 1917. Collateral in secured party's possession.

§ 1918. Request for accounting or statement of account.

§ 1919. Attachment of security interest to collateral.

§ 1911. Security interest.

(a) Any person may give a security interest in collateral, and any person may take a security interest in collateral.

(b) Notwithstanding subsection (a), no security interest other than a purchase-money security interest shall be given or taken in consumer goods.

(c) A security interest shall not be deemed invalid because the debtor has the right to use, possess, sell, exchange, commingle, or otherwise dispose of the collateral.

[Header B: **11 PNCA § 1911** **BUSINESS & BUSINESS REGULATION**

]

(d) A security interest in collateral shall constitute a security interest in any guarantee or supporting obligation with respect to the collateral.

Source

RPPL 8-42 § 7, modified.

§ 1912. Nature of a purchased-money security interest.

(a) The security interest of a consignor in goods that are the subject of a consignment shall be deemed a purchase-money security interest in inventory.

(b) In a transaction other than a consumer-goods transaction, a purchase-money security interest shall not lose its status if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation;
or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

Source

RPPL 8-42 § 8, modified.

§ 1913. Secured obligation.

(a) A security interest may secure one or more obligations.

(b) Secured obligations may be described specifically or in general terms.

(c) Secured obligations may be monetary or non-monetary obligations.

(d) Secured obligations may be governed by foreign law.

(e) A security interest may secure future obligations, whether mandatory, conditional, or optional.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1914**

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(f) A security interest may secure pre-existing obligations.

Source

RPPL 8-42 § 9, modified.

§ 1914. Collateral.

(a) Collateral may be:

(1) personal property of any nature, including tangible and intangible personal property;

(2) personal property in which the debtor has rights at the time of the conclusion of the security agreement;

(3) personal property that is described in the security agreement, but in which the debtor acquires rights at a later time;

- (4) personal property that is in or outside of the Republic of Palau;

- (5) goods sold or leased (no matter what the duration of the agreement) under an agreement denominated as a lease but which is actually a transaction for security, or other title-retention scheme;

- (6) accounts or chattel paper that have been sold;

- (7) goods that are consigned;

- (8) proceeds of collateral;

- (9) fixtures;

- (10) timber to be cut;

- (11) as-extracted collateral; and

- (12) goods leased for a period greater than one year.

Source

RPPL 8-42 § 10, modified.

[Header B: **11 PNCA § 1914** **BUSINESS & BUSINESS REGULATION**

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§ 1915. Collateral description in security agreement or notice.

(a) A description of collateral in a security agreement or notice shall be sufficient if it:

(1) describes collateral by item or kind in a manner that enables the collateral to be identified;

(2) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property; or

(3) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

(b) A notice that covers fixtures, timber to be cut, or as-extracted collateral shall be effective only if it provides a description of the relevant real property. A description of real property shall be required only to reasonably describe the real property, and shall not be required to satisfy the requirements of a description necessary to create a mortgage in real property or to establish ownership rights in real property.

Source

RPPL 8-42 § 11, modified.

§ 1916. Effectiveness of security agreement.

(a) A security agreement shall be effective according to its terms between the parties, against purchasers of the collateral, and against creditors and lien holders, except as otherwise provided in this chapter.

(b) A security agreement may be found in multiple records when read together.

Source

RPPL 8-42 § 12, modified.

§ 1917. Collateral in secured party's possession.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1918**

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(a) A secured party shall exercise reasonable care in the physical custody and preservation of collateral in the secured party's possession.

(b) Unless otherwise agreed, if the collateral is in the secured party's possession:

(1) reasonable expenses shall be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral;

(2) the risk of accidental loss or damage is borne by the debtor to the extent of a deficiency in any insurance coverage; and

(3) the secured party may hold as additional security any increases received from the collateral except money, and shall apply money to reduce the secured obligation unless the money is remitted to the debtor.

Source

RPPL 8-42 § 13, modified.

§ 1918. Request for accounting or statement of account.

(a) A debtor may:

(1) request an accounting of the unpaid obligations secured by collateral;

(2) request that a secured party approve or correct a list of what the debtor believes to be the collateral securing an obligation; or

(3) request that a secured party approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date.

(b) A secured party shall comply with a request under subsection (a) within two (2) weeks after receipt of such request. A debtor shall be entitled without charge to one response to a request under this section during any six (6) month period. The secured party may require payment of a reasonable charge for each additional response within a six (6) month period.

(c) An account debtor that has received notification of an assignment of the account shall

[Header B: **11 PNCA § 1918** **BUSINESS & BUSINESS REGULATION**

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be entitled to receive from the assignee a signed record that releases the account debtor from any further obligation to the assignee, if there is no outstanding secured obligation and the assignee has no commitment to make advances, incur obligations, or otherwise give value. The release shall be sent as soon as reasonably practicable, but not more than ten (10) days after the secured party receives a demand from the debtor. This subsection shall not apply to the sale of an account or chattel paper.

Source

RPPL 8-42 § 14, modified.

§ 1919. Attachment of security interest to collateral.

(a) A security interest shall attach to collateral and becomes enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given by the secured party to the debtor;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (A) the debtor has signed a security agreement that provides a description of the collateral;
 - (B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement; or
 - (C) the collateral is deposit accounts and the secured party has control.
- (b) Unless otherwise agreed, the attachment of a security interest to collateral shall give the secured party the right to proceeds and shall be attachment of a security interest in a guarantee or other supporting obligation for the collateral.
- (c) The attachment of a security interest to a right to payment or performance secured by a security interest in personal property or a mortgage in real property shall be attachment of a security interest to the security interest or mortgage.
- (d) Goods shall be determined to be equipment, inventory, farm products, or consumer goods at the time that a security interest attaches to the goods.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1921**

]

(e) For the purposes of subsection (a)(2), a debtor shall have rights in timber to be cut when the timber is cut, and in as-extracted collateral at the time that the minerals subject to the security interest are extracted.

Source

RPPL 8-42 § 15, modified.

Subchapter III

Perfection of Security Interests

§ 1921. Perfection of a security interest.

§ 1922. Security interests that must be or may be perfected by possession.

§ 1923. Security interest in a deposit account perfected by control.

§ 1924. Security interests that are perfected upon attachment.

§ 1925. Perfection of a security interest in a motor vehicle.

§ 1926. Security interests in documents and goods covered by documents.

§ 1927. Perfection of security interests in supporting obligations.

§ 1928. Continuity of perfection.

§ 1929. Continuation of a security interest in collateral and proceeds.

§ 1921. Perfection of a security interest.

(a) A security interest shall be perfected when it has attached to the collateral and a means of perfection has been completed. There shall be four (4) means of perfecting a security interest:

(1) the filing of a notice in the filing office;

(2) possession of the collateral by the secured party;

(3) control of a deposit account by the secured party; and

(4) perfection upon attachment of the security interest to collateral, without filing a notice.

(b) To perfect a security interest a notice shall be filed in the filing office, unless this chapter provides otherwise.

Source

RPPL 8-42 § 16, modified.

[Header B: **11 PNCA § 1921** **BUSINESS & BUSINESS REGULATION**

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§ 1922. Security interests that must be or may be perfected by possession.

(a) A security interest in money shall be perfected only by the secured party taking possession of the money, except for cash proceeds.

(b) A security interest in goods, instruments, documents, or chattel paper may be perfected by the secured party's taking possession, and without filing a notice.

(c) A security interest perfected by possession shall be effective from the time possession is taken and continues only so long as possession is retained, unless otherwise specified in this chapter.

(d) A security interest, other than a security interest in money, perfected by possession under this section may also be perfected by filing a notice before, during, or after a period of possession by a secured party.

Source

RPPL 8-42 § 17,modified.

§ 1923. Security interest in a deposit account perfected by control.

(a) A security interest in a deposit account may be perfected by the secured party's taking control of the deposit account, and without filing a notice.

(b) A secured party shall be deemed to have control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1926**

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(c) Where a secured party has satisfied subsection (b), the secured party shall be deemed to have control of the deposit account, regardless of whether or not the debtor retains the right to direct the disposition of funds from the deposit account.

Source

RPPL 8-42 § 18, modified.

§ 1924. Security interests that are perfected upon attachment.

(a) The following security interests shall be perfected when they attach to the collateral and without the filing of a notice:

(1) A purchase-money security interest in consumer goods.

(2) A security interest in proceeds, if the underlying security interest is perfected.

(3) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

Source

RPPL 8-42 § 19, modified.

§ 1925. Perfection of a security interest in a motor vehicle.

A security interest in a motor vehicle may be perfected by filing a notice that describes the motor vehicle generally or by serial number in a manner prescribed by the filing office.

Source

RPPL 8-42 § 20, modified.

§ 1926. Security interests in documents and goods covered by documents.

(a) While goods are in the possession of a bailee that has issued a document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document.

(b) Any security interest in goods perfected by filing a notice during the period that goods are in the possession of the bailee shall be subordinate to a security interest perfected in the document.

Source

RPPL 8-42 § 21, modified.

§ 1927. Perfection of security interests in supporting obligations.

(a) Perfection of a security interest in collateral also perfects a security interest in a guarantee supporting the collateral.

(b) Perfection of a security interest in a right to payment or performance also perfects a security interest in a mortgage on real property securing the right to payment or performance.

(c) The filing of a notice shall not be required to perfect a security interest in a guarantee or mortgage under subsections (a) and (b).

Source

RPPL 8-42 § 22, modified.

§ 1928. Continuity of perfection.

(a) A security interest shall be perfected continuously if it is first perfected in one manner and later perfected in another manner, if there is no period during which it is not perfected.

(b) If a secured party assigns a perfected security interest, a notice need not be filed under this chapter to continue perfection of the security interest against creditors of the debtor, transferees from the debtor, and lien holders.

(c) A security interest in proceeds shall be a continuously perfected security interest if the security interest in the original collateral was perfected. The security interest in proceeds shall be unperfected twenty (20) days after the debtor receives the proceeds unless:

(1) a filed notice covers the original collateral, and the proceeds are cash proceeds or proceeds of a nature described in the notice; or

(2) the security interest in the proceeds is perfected before the expiration of the twenty (20) day period.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1931**

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Source

RPPL 8-42 § 23, modified.

§ 1929. Continuation of a security interest in collateral and proceeds.

(a) A security interest shall continue in collateral notwithstanding sale, lease, license, exchange, or other disposition of the collateral, except as otherwise provided in this chapter or as otherwise agreed.

(b) Upon the disposition of collateral, a security interest shall attach to any proceeds of the collateral, except as otherwise provided in this chapter or agreed upon by the parties.

Source

RPPL 8-42 § 24, modified.

Subchapter IV

Priority Among Security Interests in the Same Collateral

Part A

General Rules

§ 1931. Multiple security interests in collateral.

§ 1932. Priority of lien holder.

§ 1933. Priority of lien arising by operation of law.

§ 1934. Future advances.

§ 1931. Multiple security interests in collateral.

(a) The priority of a security interest shall be measured from the time the first notice is filed covering the collateral, or the time the security interest is first perfected, whichever is earlier, if there is no time after the first time of filing or perfection at which the notice was ineffective or the continuity of perfection was interrupted.

(b) Unless otherwise provided in this chapter, among conflicting security interests the following shall apply:

(1) The first security interest to attach to collateral has priority among security interests for which no effective notice covers the collateral and for which there is no perfection.

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(2) A perfected security interest has priority over a security interest that is not perfected.

(3) The first security interest for which a notice is filed or for which there is perfection has priority where conflicting security interests are perfected.

(c) A date of filing or perfection as to collateral shall be deemed to be the date of filing or perfection of a security interest in proceeds.

Source

RPPL 8-42 § 25, modified.

§ 1932. Priority of lien holder.

(a) A security interest shall have priority over the rights of a lien holder unless a notice of the rights of the lien holder is filed in accordance with this chapter:

(1) before the security interest is perfected; and

(2) before a notice covering the collateral is filed and a security agreement is signed by the debtor.

Source

RPPL 8-42 § 26, modified.

§ 1933. Priority of lien arising by operation of law.

A lien or right of retention in goods arising by operation of law in favor of a person to secure payment for materials or services with respect to the goods shall have priority over a perfected security interest while the goods are in the possession of the person holding the lien or right of retention if the person provided the materials or services in the ordinary course of business.

Source

RPPL 8-42 § 27.

§ 1934. Future advances.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1935**

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If a perfected security interest secures an obligation by the secured party to make future advances, the rights of a lien holder shall have priority over the security interest with respect to advances made after the secured party has actual knowledge of the interest of the lien holder or more than twenty (20) days after a notice of the interest of the lien holder is filed in the filing office, whichever occurs first.

Source

RPPL 8-42 § 28, modified.

Part B

Rights of Transferees of Collateral

§ 1935. Buyers of collateral.

§ 1936. Lessees of goods.

§ 1937. Assignments.

§ 1938. Non-assignability clauses.

§ 1939. Subordination of priority.

§ 1935. Buyers of collateral.

(a) Except as otherwise provided in this section, a buyer shall take collateral free of a security interest if the buyer gives value for the collateral without actual knowledge of the security interest and before it is perfected.

(b) Except as otherwise provided in this chapter, a buyer, other than a secured party, of chattel paper, documents, goods, or instruments shall take such property free of a security interest if the buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(c) A buyer in the ordinary course of business shall take goods free of a security interest in the goods, even if the security interest is perfected and even if the buyer knows of its existence.

(d) A buyer of goods that are consumer goods of the seller shall take the goods free of a security interest regardless of whether or not the security interest is perfected, if:

(1) the person buys and takes delivery of the goods without actual knowledge of the security interest; and

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(2) before a notice is filed that describes the goods.

(e) A person that buys a motor vehicle shall take the motor vehicle free of a prior security interest only if:

(1) the person buys without actual knowledge of the security interest, and

(2) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice.

(f) A person that buys farm products for use as consumer goods shall take the farm products free of any security interest.

(g) A buyer in [the] ordinary course of business of the seller, buying oil, gas, or other minerals at the wellhead or minehead or after extraction shall take such property free of an interest arising out of a mortgage or other encumbrance on real property.

Source

RPPL 8-42 § 29, modified.

Notes

The bracketed [the] in subsection (g) is inserted per Code Commission.

§ 1936. Lessees of goods.

(a) Except as otherwise provided in this section, a lessee of goods shall take its leasehold interest free of a security interest in the goods if the lessee receives delivery of the goods:

(1) without actual knowledge of the security interest; and

(2) before the security interest is perfected.

(b) A lessee in the ordinary course of business shall take a leasehold interest free of a security interest in the goods even if the security interest is perfected and even if the lessee knows of its existence.

(c) A lessee shall take a motor vehicle free of a security interest only if the lessee leased:

(1) without actual knowledge of the security interest; and

(2) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1937**

]

Source

RPPL 8-42 § 30, modified.

§ 1937. Assignments.

(a) A person may assign all or part of the person's rights in accounts, chattel paper, instruments, or other intangible property.

(b) The assignee shall be subject to all the terms of the agreement between the account debtor and assignor.

(c) No communication to the account debtor shall be required for attachment, perfection or enforcement of a security interest arising from an assignment, except as provided in this section.

(d) After receiving written advice of an assignment from the assignor or assignee, the account debtor shall perform the obligation by paying the assignee. However, if requested by the account debtor, the assignee shall furnish timely and sufficient evidence of the assignment, and unless the assignee complies, the account debtor may perform the obligation by paying the assignor.

(e) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, the rights of an assignee shall be subject to the following:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(2) Any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(f) Notwithstanding subsection (e), the claim of an account debtor against an assignor may be asserted against an assignee only to reduce the amount the account debtor owes.

Source

RPPL 8-42 § 31, modified.

§ 1938. Non-assignability clauses.

[Header B: **11 PNCA § 1937** **BUSINESS & BUSINESS REGULATION**

]

(a) Except as provided with respect to the purchase of chattel paper and instruments, an agreement between a secured party and an account debtor shall be unenforceable if it prohibits, requires consent, or otherwise restricts:

(1) the creation, attachment, or enforcement of a security interest, or

(2) the sale or assignment of an account, a lease, or chattel paper.

Source

RPPL 8-42 § 32, modified.

§ 1939. Subordination of priority.

A person entitled to priority under this chapter may agree to modify or forego the priority, and may do so without filing or amending a notice with respect to the change in priority.

Source

RPPL 8-42 § 33, modified.

Part C

Purchase-Money Security Interests

§ 1940. Notice of purchase-money security interest.

§ 1941. Priority of purchase-money security interest in equipment.

§ 1942. Priority of purchase-money security interest in inventory or livestock.

§ 1940. Notice of purchase-money security interest.

If a person files a notice with respect to a purchase-money security interest in goods before or within five (5) days after the debtor takes possession of the goods, the security interest shall have priority over the rights in the goods of a buyer, lessee, or lien holder which arise between the time the security interest attaches and the time of filing of the notice.

Source

RPPL 8-42 § 34.

§ 1941. Priority of purchase-money security interest in equipment.

]

A perfected purchase-money security interest in equipment shall have priority over a conflicting security interest in the same collateral and the interest of a lien holder, and shall also have priority in its proceeds, if the purchase-money security interest is perfected when the debtor receives possession of the equipment, or within five (5) days thereafter.

Source

RPPL 8-42 § 35.

§ 1942. Priority of purchase-money security interest in inventory or livestock.

(a) A perfected purchase-money security interest in inventory or livestock shall have priority over a conflicting security interest in the same inventory or livestock if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory or livestock; and

(2) the purchase-money secured party notifies, in writing, the holder of the conflicting security interest if the holder had filed a notice covering the same types of inventory or livestock before the time of a notice filed by the purchase-money secured party.

(b) An effective notification under subsection (a)(2) shall describe the inventory or livestock and state that the person giving the notification has or expects to acquire a purchase-money security interest in inventory or livestock of the debtor.

Source

RPPL 8-42 § 36, modified.

Part D

Priority in Special Classes of Collateral

[Header B: 11 PNCA § 1943 BUSINESS & BUSINESS REGULATION

]

§ 1943. Crops.

§ 1944. Accessions.

§ 1945. Commingled goods.

§ 1946. Fixtures.

§ 1943. Crops.

A perfected security interest in crops growing on real property shall have priority over a conflicting interest of the owner, a lessor, or a mortgagee if the debtor is in possession of the real property or has an interest of record in the real property.

Source

RPPL 8-42 § 37.

§ 1944. Accessions.

(a) A security interest may be created in an accession and continues in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest shall remain perfected in the accession.

(b) Upon default:

(1) a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole;

(2) a secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods for the cost of repair of any physical injury to the whole;

(3) a secured party that removes an accession shall promptly reimburse any other secured party for the cost of repair of any damage to the property;

(4) the secured party shall not be required to reimburse the debtor or other secured party for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them; and

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1945**

]

(5) a person entitled to reimbursement may refuse permission to remove the accession until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Source

RPPL 8-42 § 38, modified.

§ 1945. Commingled goods.

(a) A security interest may not be created in goods that have become commingled goods. However, a security interest may attach to a product or mass that results when goods subject to a security interest become commingled goods.

(b) If collateral becomes commingled goods, a security interest in the collateral attaches to the product or mass.

(c) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected without the need for filing a notice. The priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled.

(d) If more than one security interest attaches to the product or mass the following shall apply:

(1) A security interest that is perfected shall have priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) The first security interest to attach to the product or mass shall have priority among unperfected security interests.

(3) If more than one security interest is perfected, the security interests shall rank equally in proportion to the value of the collateral at the time it became commingled goods.

Source

RPPL 8-42 § 39, modified.

§ 1946. Fixtures.

[Header B: **11 PNCA § 1946** **BUSINESS & BUSINESS REGULATION**

]

(a) A security interest may be created in goods that are fixtures. A security interest may continue in goods that become fixtures.

(b) Notwithstanding subsection (a), a security interest in ordinary building materials shall be unenforceable when the building materials are incorporated into real property.

(c) This section shall not determine priority in readily removable factory machines, office machines, and domestic appliances.

(d) A security interest in fixtures shall be subordinate to all other real rights in real property, except as provided in this section.

(e) A perfected security interest in fixtures shall have priority over the interest of the owner of real property, or a mortgagee notwithstanding any provision in the mortgage, if a notice is filed before the interest of the owner or the mortgagee is registered.

(f) A perfected security interest in fixtures shall have priority over the interest of a lien holder if a notice is filed before the filing of a notice of the interest of the lien holder as required by this chapter.

(g) A perfected security interest in fixtures shall have priority over the interest of the owner of real property, a lien holder, or a mortgagee notwithstanding any provision in the mortgage, if the security interest is a purchase money security interest given by the debtor before the goods become fixtures, and a notice is filed before the goods become fixtures or within five (5) days thereafter. The priority established in this subsection is not effective against a person who holds a construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation to pay for the construction of an improvement on real property, if the mortgage is registered and if the mortgage indicates that it secures such an obligation.

(h) Upon default the following shall apply:

(1) If a security agreement covers goods that are or become fixtures, a secured party may proceed under this chapter or in accordance with rights with respect to real property.

(2) Subject to the other provisions of this chapter, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1947**

]

(3) A secured party that removes a collateral that is a fixture shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal.

(4) The secured party shall not be required to reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them.

(5) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Source

RPPL 8-42 § 40, modified.

Part E

Security Interests in Chattel Paper, Documents and Instruments

§ 1947. Priority rights of purchasers of chattel paper and instruments.

§ 1948. Priority of rights of purchasers of documents and instruments.

§ 1947. Priority rights of purchasers of chattel paper and instruments.

(a) A purchaser of chattel paper or instruments shall have priority over a conflicting security interest in the chattel paper or instruments and also has priority with respect to the proceeds of the chattel paper or instruments if:

(1) in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or instruments; and

(2) the chattel paper or instruments do not indicate an assignment to the person holding the conflicting security interest.

Source

RPPL 8-42 § 41.

§ 1948. Priority of rights of purchasers of documents and instruments.

[Header B: **11 PNCA § 1948** **BUSINESS & BUSINESS REGULATION**

]

(a) This chapter shall not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers shall take priority over an earlier security interest, even if perfected, to the extent provided in the law on negotiable instruments.

(b) Filing a notice shall not constitute notice of a claim or defense to the holders, purchasers, or persons described in subsection (a).

Source

RPPL 8-42 § 42, modified.

Part F

Security Interests in Deposit Accounts

§ 1949. Priority of conflicting security interests in deposit accounts.

§ 1950. Effect of transfers of money and funds from deposit accounts.

§ 1951. Right of recoupment or setoff against deposit account.

§ 1949. Priority of conflicting security interests in deposit accounts.

(a) A security interest held by a secured party having control of a deposit account shall have priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in subsections (c) and (d), security interests perfected by control shall have priority according to the time of obtaining control.

(c) Except as otherwise provided in subsection (d), a security interest held by the bank with which the deposit account is maintained shall have priority over a conflicting security interest held by another secured party.

(d) A security interest in a deposit account perfected by control under section 1923(b)(3) shall have priority over a security interest held by the bank with which the deposit account is maintained.

Source

RPPL 8-42 § 43, modified.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1951**

]

§ 1950. Effect of transfers of money and funds from deposit accounts.

(a) A transferee of money shall take the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Source

RPPL 8-42 § 44.

§ 1951. Right of recoupment or setoff against deposit account.

(a) Except as otherwise provided in subsection (b), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(b) A setoff by a bank based on a claim against a debtor shall be ineffective against a secured party that has established control of a deposit account by becoming the bank's customer with respect to the deposit account.

Source

RPPL 8-42 § 45, modified.

Subchapter V

Filing Notice

[Header B: **11 PNCA § 1961** **BUSINESS & BUSINESS REGULATION**

]

§ 1961. The filing office.

§ 1962. Duties of the filing office.

§ 1963. Regulations and fees.

§ 1964. Notice of the interest of a lien holder.

§ 1965. Access to filing office records.

§ 1966. Information from filing office.

§ 1967. Initial notice.

§ 1968. Name of debtor and secured party.

§ 1969. Effect of changes in circumstance.

§ 1970. Duration of notice and effect of lapse.

§ 1971. Amendment of notice.

§ 1972. Continuation of notice.

§ 1973. Termination of notice.

§ 1974. Effectiveness of notice.

§ 1975. Notice shall not constitute “constructive notice.”

§ 1961. The filing office.

(a) A filing office shall be established in the Commission.

(b) A filing officer shall be appointed to administer the day-to-day activities of the filing office.

(c) All obligations of the Commission under this chapter shall be fully discharged by the creation and businesslike maintenance of an electronic information system that provides for the filing of notices of security interests and notices of the interests of lien holders, and for the search of such notices by any person.

(d) No person shall have a claim against the Commission for errors in the filing office records committed by a person that files a notice, or for failure to provide filing office services for reasons beyond the control of the Commission.

(e) The duties of the filing office shall be merely administrative and the following shall apply:

(1) By filing a notice or refusing to file a notice, the filing office shall not be deemed to have determined the sufficiency, correctness, authenticity, or validity of the notice or any information contained in the notice.

]

(2) The filing of a notice shall not create a security interest in collateral or provide evidence that a security interest in collateral exists.

(f) Except as specified in subsection (g), the filing office is the place to file:

(1) a notice of a security interest in collateral;

(2) a notice of the interest of a lien holder, and

(3) a notice of the interest of a secured party in a transaction concluded prior to the effective date of this chapter as provided in this chapter.

(g) The Clerk of Court and the Land Court shall be the place to file a notice of a security interest in fixtures, timber to be cut, or as-extracted collateral.

Source

RPPL 8-42 § 46, modified.

§ 1962. Duties of the filing office.

(a) For each notice filed, the filing office shall:

(1) assign a unique filing number in the case of an initial notice;

(2) assign a unique number to notices other than the initial notice;

(3) create a record that bears the filing number and the date and time of filing; and

(4) maintain the filed record for public inspection.

(b) The filing office shall index an initial notice by the name of the debtor and shall index all filed records relating to an initial notice in a manner that associates the initial notice and all filed records relating to the initial notice. For notices containing serial numbers of motor vehicles, the filing office shall maintain an index of serial numbers.

(c) The filing office shall maintain the capability to retrieve a record by the name of the debtor and by the filing number assigned to the initial notice to which the record relates, and that associates an initial notice and all records relating the initial notice with one another. For notices containing the serial number of a motor vehicle, the filing office shall maintain the capability to retrieve a record by the serial number of the motor vehicle.

[Header B: **11 PNCA § 1962** **BUSINESS & BUSINESS REGULATION**

]

(d) The filing office shall maintain records of lapsed or terminated notices for a period of ten (10) years beyond the date of lapse or termination.

Source

RPPL 8-42 § 47, modified.

§ 1963. Regulations and fees.

(a) The Commission may promulgate regulations that establish:

(1) a reasonable fee for filing a notice and the manner of payment of fees;

(2) a reasonable fee for issuing a certified search report;

(3) the manner of filing notices; and

(4) the manner of submitting search requests.

(b) The Commission may promulgate any other regulations necessary to effectuate the intent of this chapter.

Source

RPPL 8-42 § 48, modified.

§ 1964. Notice of the interest of a lien holder.

The notice of the interest of a lien holder shall be limited to identification of the lien holder, identification of the person owing payment or performance to the lien holder, and a description of personal property against which the lien holder claims or may claim a right, in the same manner as provided in this chapter for the filing a notice of a security interest.

Source

RPPL 8-42 § 49, modified.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1966**

]

§ 1965. Access to filing office records.

- (a) The information contained in notices shall be public records.

- (b) The indexes and other records created by the filing office with respect to notices, in any form or medium, shall be public records.

- (c) Any person shall have a right to inspect and obtain copies of the records of the filing office.

Source

RPPL 8-42 § 50.

§ 1966. Information from filing office.

(a) The filing office shall communicate the following information to any person that requests it:

(1) Whether there is filed on a date and time specified by the filing office, any notice that designates a particular debtor and has not lapsed with respect to all secured parties.

(2) The filing number, and the date and time of filing of each notice.

(3) The name and address of each debtor and secured party on each notice.

(4) All of the information contained in each notice.

(b) A request may be made to search the records of the filing office by any of the following criteria:

(1) The filing number of a notice.

(2) The name of a debtor.

(3) The serial number of a motor vehicle.

(c) In complying with its duty, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate the requested information by issuing a written certificate that shall be admissible into evidence in the Supreme Court without extrinsic evidence of its authenticity.

[Header B: **11 PNCA § 1966**

BUSINESS & BUSINESS REGULATION

]

Source

RPPL 8-42 § 51, modified.

§ 1967. Initial notice.

(a) An initial notice shall be sufficient if it:

(1) identifies the debtor and provides a mailing address;

(2) identifies the secured party and a mailing address; and

(3) describes the collateral covered by the notice as set forth in section 1915.

(b) A person is entitled to file an initial notice only if the debtor authorizes the notice in a signed record. The debtor's authorization shall not be required to be contained in the notice, need not be disclosed to the filing office, and may be given after filing.

(c) By signing a security agreement, a debtor authorizes the filing of an initial notice covering the collateral described in the security agreement, and proceeds of the collateral, regardless of whether or not the security agreement expressly covers proceeds.

(d) A notice may be filed before a security agreement is concluded or before a security interest attaches to collateral.

(e) A notice substantially complying with the requirements of this chapter shall be effective, even if it is insufficient under this section, unless the insufficiency makes the notice seriously misleading. A notice that insufficiently provides the name of the debtor shall be deemed to be seriously misleading.

(f) A record of a mortgage shall be effective, from the date of recording, as a notice covering fixtures, timber to be cut, or as-extracted collateral only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods that are, or that are to become, fixtures related to the real property described in the record, or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1968**

]

(3) the record satisfies the requirements for a notice in this section other than an indication that it is to be filed in the real property records; and

(4) the record is duly recorded.

Source

RPPL 8-42 § 52, modified.

§ 1968. Name of debtor and secured party.

(a) A notice shall be deemed to have sufficiently provided the name of the debtor where:

(1) the notice contains the name of the person as it appears on the records of the Social Security Administration of the Republic of Palau;

(2) the debtor is a natural person and not a citizen of the Republic of Palau and the notice contains the name of the person as indicated on the person's passport;

(3) the debtor is an entity and the notice contains the name of the debtor as shown on the records of the Office of the Attorney General in the case of an entity incorporated under the law of Palau or, for any other entity, the documents that establish that entity.

(4) the debtor is a foreign entity authorized to do business under the law of Palau and the notice provides the name of the debtor as shown on the records of the Office of Attorney General; or

(5) the debtor is a foreign entity not authorized to do business under the law of Palau and the notice provides the name of the debtor as shown on the appropriate registry in the country where the foreign entity is organized.

(b) A notice that sufficiently provides the name of the debtor shall not be rendered ineffective by the presence or absence of a trade name or other name of the debtor. A notice that provides only the debtor's trade name shall be deemed to have not sufficiently provided the name of a debtor.

(c) A notice may provide the name of more than one debtor and the name of more than one secured party.

[Header B: **11 PNCA § 1968** **BUSINESS & BUSINESS REGULATION**

]

(d) The failure to indicate on a notice that a person is a representative of the secured party does not affect the sufficiency of a notice.

Source

RPPL 8-42 § 53, modified.

§ 1969. Effect of changes in circumstance.

(a) A filed notice shall remain effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues, even if the secured party knows of or consents to the disposition.

(b) If a debtor changes its name so that a filed notice becomes seriously misleading, the notice shall remain effective to perfect a security interest in collateral acquired by the debtor before or within four (4) months after the change. However, the notice shall remain effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change only if an amendment to the notice is filed within four (4) months of the change.

(c) Except as provided for a change of debtor name under subsection (b), a notice shall remain effective if, after the notice is filed, a change of circumstances renders the notice seriously misleading.

Source

RPPL 8-42 § 54, modified.

§ 1970. Duration of notice and effect of lapse.

(a) A filed notice shall remain effective for a period of five (5) years after the date of filing, unless the notice is continued or terminated.

(b) The effectiveness of a filed notice shall lapse on the expiration of the five (5) year period unless, before the lapse, a continuation statement is filed.

(c) Upon lapse, a notice shall become ineffective and any security interest that was perfected by the notice becomes unperfected, unless the security interest is perfected without filing.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1971**

]

(d) If the security interest becomes unperfected upon lapse, it shall be deemed to have never been perfected against a purchaser of the collateral for value.

Source

RPPL 8-42 § 55, modified.

§ 1971. Amendment of notice.

(a) An initial notice may be amended by one or more amendments. To be effective an amendment shall:

(1) identify the initial notice by its filing number;

(2) identify the secured party on the notice that authorizes the amendment;

(3) indicate that it is an amendment to the notice; and

(4) provide all of the information required of an initial notice, completely restating the notice in a manner that reflects the amended state of the notice.

(b) If an amendment adds collateral covered by a notice, or adds a debtor to a notice, it shall be effective if the debtor authorizes the filing in a signed record. By signing a security agreement, a debtor authorizes the filing of an amendment, covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

(c) If there is more than one secured party on the notice, the amendment shall be effective if a secured party authorizes the filing in a signed record.

(d) An amendment that adds collateral shall be effective as to the added collateral only from the date of the filing of the amendment.

(e) An amendment that adds a debtor shall be effective as to the added debtor only from the date of the filing of the amendment.

(f) An amendment other than an amendment to add collateral or add a debtor shall be effective only if a secured party on the notice authorizes the filing of the amendment in a signed record.

[Header B: **11 PNCA § 1971** **BUSINESS & BUSINESS REGULATION**

]

(g) An amendment shall be ineffective if it purports to delete all secured parties and fails to provide the name of a new secured party, or purports to delete the names of all debtors and fails to provide the name of a debtor not previously named on the notice.

(h) If there is more than one secured party on the notice, any secured party or all secured parties may authorize the filing of an amendment.

(i) The filing of an amendment does not extend the period of effectiveness of a notice.

Source

RPPL 8-42 § 56, modified.

§ 1972. Continuation of notice.

(a) The period of effectiveness of a notice may be continued by filing a continuation statement that:

(1) identifies the initial notice by its filing number;

(2) identifies a secured party on the notice that authorizes the continuation statement; and

(3) indicates that the effectiveness of the notice, with respect to the secured party that authorized the filing, is to be continued.

(b) A continuation statement may be filed only within six (6) months before the expiration of the five (5) year period of the notice.

(c) Upon timely filing of a continuation statement, the effectiveness of the notice shall continue for a period of five (5) years commencing on the day on which the notice would have become ineffective in the absence of the filing.

(d) The effectiveness of such a notice shall be continued only with respect to the secured party that authorized the filing of the continuation statement.

(e) Upon the expiration of the new five (5) year period, the notice shall lapse with respect to the secured party unless, before the lapse, another continuation statement authorized by that secured party is filed.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1973**

]

(f) Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the notice.

Source

RPPL 8-42 § 57, modified.

§ 1973. Termination of notice.

(a) The effectiveness of a notice may be terminated by filing a termination statement that:

(1) identifies the initial notice by its filing number;

(2) identifies a secured party on the notice that authorizes the termination statement; and

(3) indicates that the notice is no longer effective with respect to the interest of the secured party that authorized the filing of the termination statement.

(b) Within twenty (20) days after the secured party receives a written demand by the debtor, the secured party on a notice shall file a termination statement if:

(1) there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial notice; or

(3) the notice covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.

(c) A termination statement shall terminate the effectiveness of a notice with respect to a secured party on the notice only if the termination statement is authorized in a signed record by that secured party. Upon the filing of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing secured party.

Source

RPPL 8-42 § 58, modified.

§ 1974. Effectiveness of notice.

[Header B: **11 PNCA § 1974** **BUSINESS & BUSINESS REGULATION**

]

(a) An initial notice, amendment, continuation statement, or termination statement shall be effective at the time it is available to the public by means of a search of the records of the filing office as provided in this chapter.

(b) The filing office may refuse to file a notice only because:

(1) in the case of an initial notice, the record does not provide the name of a debtor;

(2) in the case of an amendment, the record does not provide the name of a debtor, does not provide the filing number of the initial notice, or the record identifies an initial notice whose effectiveness has lapsed;

(3) in the case of a continuation statement, the record does not provide the filing number of the initial notice, or was not submitted within the permitted six (6) month time period;

(4) in the case of a termination statement, the record does not provide the filing number of the initial notice, or the record relates to an initial notice that has lapsed with respect to each secured party on the notice; or

(5) less than the full filing fee is tendered, or no other arrangement has been made for the payment of the fee.

(c) A record that the filing office refuses to accept for a reason other than one set forth in this section shall remain effective as a filed record except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the filing office.

(d) If a filing office refuses to accept a record for filing, it shall promptly communicate the fact of and reason for its refusal to the person that presented the record.

(e) A notice authorized by one secured party on the notice does not affect the rights of another secured party on the notice.

(f) The failure of the filing office to index a record correctly shall not affect the effectiveness of the record.

Source

RPPL 8-42 § 59, modified.

]

§ 1975. Notice shall not constitute “constructive notice.”

A notice shall not constitute constructive notice to any person or knowledge of its existence or contents by any person.

Source

RPPL 8-42 § 60.

Subchapter VI

Enforcement of Security Interests Upon Default

§ 1981. Default.

§ 1982. Collection rights of secured party.

§ 1983. Secured party’s right to possession or control.

§ 1984. Secured party’s disposal of collateral after default.

§ 1985. Consequences of disposal of collateral.

§ 1986. Retention of collateral.

§ 1987. Debtor’s right to redeem collateral.

§ 1988. Determination of whether the secured party’s conduct was commercially reasonable.

§ 1989. Secured party’s liability for failure to comply with enforcement rules.

§ 1981. Default.

(a) Upon default, the secured party shall have the following rights:

(1) The right to possession or control of the collateral, as the secured party prefers, even if the security agreement is silent about possession or control.

(2) The right to dispose of the collateral.

(3) Other rights and remedies provided in this chapter.

(4) Other rights and remedies in the security agreement.

(5) Any rights and remedies available under other law.

(b) The secured party may pursue any or all of its remedies simultaneously or consecutively.

[Header B: **11 PNCA § 1981** **BUSINESS & BUSINESS REGULATION**

]

(c) Pursuit of one remedy shall not preclude or prejudice the pursuit of another remedy.

(d) Upon default, if the collateral is a document, the secured party may proceed as to the document and as to the goods covered by the document. The secured party may proceed without judicial action if the document is in the possession of the secured party.

(e) A lessor of goods for a period greater than one year shall have the common law rights of a lessor upon default, and any other rights that may be provided by statute.

Source

RPPL 8-42 § 61, modified.

§ 1982. Collection rights of secured party.

(a) Upon default, with respect to accounts, chattel paper, or other rights to payment, the secured party shall be entitled to notify an account debtor or other person that owes payment to make payment to the secured party, and also to take possession or control of any proceeds.

(b) If the security interest secures a debt, the secured party shall pay the debtor any amount collected in excess of the secured debt, plus expenses allowed under this subchapter. Unless otherwise agreed, if there is a deficiency in collection, the debtor owes to the secured party the difference between the amount collected and the secured debt plus expenses allowed under this subchapter.

(c) If the transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus and is liable for any deficiency only if the security agreement so provides.

(d) The secured party may act under this section without judicial process, notwithstanding any other provision of this chapter.

(e) If so agreed: and in any event after default:

(1) a secured party that is a bank with a security interest in a deposit account maintained by the bank and perfected by control may apply the balance of the deposit account to the obligation secured by the deposit account; and

(2) in other cases, a secured party that has a security interest in a deposit account perfected by control may instruct the bank to pay the balance of the deposit account to the secured party.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1983**

]

Source

RPPL 8-42 § 62, modified.

§ 1983. Secured party's right to possession or control.

(a) Upon default, the secured party may take possession or control of collateral without legal proceedings if the secured party does not breach the peace in doing so.

(b) Upon default, the secured party may take possession or control of collateral and dispose of collateral by court order, and the following shall apply:

(1) The secured party shall be entitled to a special, expedited order from the court granting the secured party possession or control over the collateral.

(2) Issues at the hearing shall be limited to the existence of a security agreement covering the collateral and at least one event of default.

(3) An order to dispossess the debtor under this section may be appealed by the debtor, but no court shall stay the dispossession order or prevent the disposal of the collateral during the appeal process.

(c) If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

(d) A secured part may render equipment unusable without removing it from its location, and may dispose of collateral at the debtor's place of business, residence, or any other location where the collateral is found.

Source

RPPL 8-42 § 63, modified.

§ 1984. Secured party's disposal of collateral after default.

[Header B: 11 PNCA § 1984 **BUSINESS & BUSINESS REGULATION**

]

(a) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral.

(b) Disposal of the collateral may be made publicly or privately, and may be made in one or more contracts.

(c) Disposal may be as a unit or in parcels, at any time and place and on any terms consistent with the secured party's duties under this chapter.

(d) The secured party shall give the debtor, and any other secured party from whom the secured party receives a written request, reasonable notice of the time and place of any public sale or the time at which any private sale or other intended disposal is to be made, unless communication is impractical because collateral is perishable or threatens to decline speedily in value. The debtor may waive the right to be informed.

(e) The secured party may buy the collateral at any sale that is open to the public.

Source

RPPL 8-42 § 64, modified.

§ 1985. Consequences of disposal of collateral.

(a) The proceeds of disposal shall be applied in the following order:

(1) the reasonable expenses of retaking, holding, preparing for disposal, and disposing of the collateral, including reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) the satisfaction of the secured obligation; and

(3) the satisfaction of debt secured by any subordinate security interest in the collateral if a written demand is received before distribution of the proceeds is completed and if the holder of a subordinate security interest gives reasonable proof of the interest.

(b) The secured party shall account to the debtor for any surplus and, unless otherwise agreed, the debtor is liable for any deficiency.

(c) When the secured party transfers the debtor's property to a purchaser that acts in good faith and gives value for the collateral, the secured party shall transfer all its rights in the collateral to the purchaser and the security interest and all subordinate security interests and claims shall be discharged.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1987**

]

(d) The director of any office maintaining records of ownership of the collateral shall issue a new title to a purchaser for value, and if the director requests, the secured party shall provide authorization for the issuance of the new title in the form of a court order granting possession to the secured party, or the secured party's sworn affidavit that the transfer is made pursuant to this chapter.

Source

RPPL 8-42 § 65, modified.

§ 1986. Retention of collateral.

(a) A secured party may, after default, propose to retain the collateral in full or partial satisfaction of the secured obligation.

(b) The proposal shall be given to the debtor and to any other secured party from whom the secured party has received a written claim of an interest in the collateral.

(c) If the secured party receives an objection in writing from a person entitled to receive notice under subsection (b) within twenty (20) days after the notice was delivered, the secured party shall dispose of the collateral as provided in this subchapter.

(d) If no objection is received within the twenty (20) day period, the secured party may retain the collateral.

Source

RPPL 8-42 § 66, modified.

§ 1987. Debtor's right to redeem collateral.

(a) Unless otherwise agreed in writing, after default, the debtor or any other secured party may redeem the collateral by fulfilling all obligations secured by the collateral and by paying expenses reasonably incurred by the secured party in taking possession, holding and preparing the collateral for disposal, including reasonable attorneys' fees and legal expenses.

[Header B: **11 PNCA § 1987** **BUSINESS & BUSINESS REGULATION**

]

(b) Redemption may take place only before the secured party has disposed of collateral or entered into a contract for its disposal or before the obligation has been discharged or the collateral has been retained as provided in this subchapter.

Source

RPPL 8-42, § 67, modified.

§ 1988. Determination of whether the secured party's conduct was commercially reasonable.

(a) A secured party shall dispose of collateral only in a commercially reasonable manner when disposing of collateral or collecting an account.

(b) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(c) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(d) A collection, enforcement, disposition, or acceptance shall be deemed to have been commercially reasonable if it has been approved in any of the following:

(1) In a judicial proceeding.

(2) By a bona fide creditors' committee.

(3) By a representative of creditors.

(4) By an assignee for the benefit of creditors.

(e) Approval under subsection (d) shall not be required to be obtained for a disposal of collateral to be commercially reasonable, and lack of approval shall not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1989**

]

Source

RPPL 8-42 § 68, modified.

§ 1989. Secured party's liability for failure to comply with enforcement rules.

(a) If the secured party does not comply with the requirements of this chapter with respect to enforcement, then the disposal of collateral may be ordered or restrained by the court on appropriate terms and conditions.

(b) If the disposal has occurred, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party prior to the disposal has a right to recover from the secured party any loss caused by a failure to comply with this subchapter.

Source

RPPL 8-42 § 69, modified.

Subchapter VII

Transition

]

§ 1991. Transition.

§ 1991. Transition.

(a) This section shall apply to:

(1) a transaction concluded prior to the effective date of this chapter that would otherwise fall within the scope of this chapter, referred to as a “prior transaction”; and

(2) the right of a lien holder whose right arose prior to the effective date of this chapter, referred to as a “prior lien”.

(b) The validity, effect and enforcement of a prior transaction or prior lien shall be determined by reference to the law in effect when the prior transaction was concluded or the prior lien arose, except as provided otherwise in this section.

(c) The provisions of this chapter on filing, priority, and enforcement shall apply to a prior transaction or prior lien only in the case of conflict with a security interest created under this chapter.

(d) A creditor under a prior transaction and the holder of a prior lien may file a notice of its interest at any time. Such a notice is referred to in this section as a “transition notice.”

(e) A transition notice may be filed in the same manner as provided for a notice of a security interest or notice of the right of a lien holder. The authorization of the debtor is not required.

(f) If a transition notice is filed:

(1) on or before the sixtieth (60th) day from the effective date of this chapter, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this chapter, as provided under subchapter II, with priority measured from the date of the commencement of this chapter; or

(2) after the sixtieth (60th) day from the effective date of this chapter, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this chapter, as provided under subchapter II, with priority measured from the date of the filing of the notice of the prior transaction or prior lien.

[Header A: **SECURED TRANSACTIONS ACT 11 PNCA § 1995**

]

(g) A security interest perfected under this chapter shall have priority over the interest created by a prior transaction or prior lien if no transition notice is filed with respect to the prior transaction or prior lien, except as provided in subsection (f).

Source

RPPL 8-42 § 70, modified.

Subchapter VIII

Commencement

§ 1995. Effective Date.

§ 1995. Effective Date.

(a) This chapter, sections 1901-1995, inclusive, shall become an effective law after its approval by the President of the Republic of Palau, or after its becoming law without such approval, on the date that the Commission promulgates as the effective date pursuant to regulation.

(b) However, the effective date of this chapter promulgated by the Commission shall not be prior to the date that the filing office is open and ready to receive notices.

(c) The Commission shall make all reasonable efforts to educate the public about the filing system prior to the effective date of this chapter.

Source

RPPL 8-42 § 71, modified.