



Suruhanjaya Sekuriti
Securities Commission
Malaysia

SECURITIES BORROWING AND LENDING GUIDELINES

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1.0 INTRODUCTION

- 1.01 The *Securities Borrowing and Lending Guidelines* replace the *Guidelines on Securities Borrowing and Lending in Malaysia* released in December 1995.
- 1.02 These guidelines set out the framework for securities borrowing and lending (SBL) activities in Malaysia where they must either be–
- (a) made through an approved clearing house acting as a central lending agency (CLA) under the SBL-CLA model; or
 - (b) entered directly over-the-counter between the eligible participants and facilitated by the approved clearing house under the SBL - negotiated transactions (SBL-NT) model.
- 1.03 These guidelines were established to assist participants in SBL transactions understand the broad regulatory framework that governs the SBL market in Malaysia and the application of the *Income Tax (Exemption) (No. 30) Order 1995* to SBL transactions. SBL participants are required to observe and give effect to the requirements and provisions relating to SBL as provided in the rules and directives of the stock exchange, clearing house and central depository.

2.0 DEFINITIONS

2.01 In these guidelines:

approved clearing house	means a clearing house that has been approved under section 38 of the <i>Capital Markets & Services Act 2007 (CMSA)</i> .
central depository	means a company approved by the Minister of Finance under section 5 of the <i>Securities Industry (Central Depositories) Act 1991 (SICDA)</i> .
eligible participant	means any borrower or lender as may be approved by the approved clearing house in accordance with its rules or directives.
eligible securities	means securities that are specified by the approved clearing house from time to time as being eligible for lending or borrowing.
SBL transaction	means any securities borrowing and lending transaction that is: (a) entered into between the approved clearing house and eligible participants enabling the approved clearing house to borrow or lend eligible securities from or to such eligible participants as the approved clearing house may determine under the SBL-CLA model; or (b) entered directly over-the-counter between the eligible participants and where the SBL transactions are facilitated by the approved clearing house under the SBL-NT model.
stock exchange	means the body corporate which has been approved by the Minister of Finance under section 8 of the CMSA.

3.0 REGULATORY FRAMEWORK

- 3.01 All SBL activities must be made through an approved clearing house under the SBL-CLA model or facilitated by an approved clearing house under the SBL-NT model
- 3.02 Paragraph 3.01 will not apply to SBL activities entered into for an over-allotment of shares which has been approved by the Securities Commission Malaysia (SC).
- 3.03 All eligible participants planning to engage in SBL transactions must obtain the prior approval of the approved clearing house in accordance with its rules and directives.
- 3.04 Only eligible securities are available for lending or borrowing in a SBL transaction in Malaysia.
- 3.05 An eligible participant should carry out SBL transactions in accordance with the rules and directives of the approved clearing house, central depository and stock exchange; and must comply with or give effect to requirements in the rules or directives of the approved clearing house, central depository and stock exchange, as the case may be.
- 3.06 Where relevant, a readiness assessment or audit as prescribed in the rules and directives of the stock exchange may be conducted to the satisfaction of the stock exchange or approved clearing house on eligible participants that intend to carry out or undertake SBL activities.
- 3.07 An approved clearing house acting as a CLA must carry out SBL transactions in accordance with these guidelines, the rules or directives of the approved clearing house and the central depository and any directions as may be given to the approved clearing house by the SC.

4.0 AUTHORISED LENDER AND BORROWER AND APPROVED SBL AGREEMENT UNDER THE TAX FRAMEWORK

4.01 The *Income Tax (Exemption) (No. 30) Order 1995* will only be applicable to transactions carried out under the SBL-CLA model or the SBL-NT model as set out below.

SBL - CLA model

4.02 The approved clearing house acting as a CLA and the eligible participants are, for the purposes of the *Income Tax (Exemption) (No. 30) Order 1995*, deemed to be the authorised lender and/or authorised borrower, and the agreement between the approved clearing house and the eligible participants constituted by the documents (including the terms and conditions for lending participant or lender, terms and conditions for borrower, circulars and rules of the approved clearing house) specified in the rules of the approved clearing house for the borrowing or lending of eligible securities in accordance with the requirements of the rules of the approved clearing house are deemed to be securities borrowing and lending agreements approved by the SC (approved SBL agreement).

4.03 Any person other than the approved clearing house and eligible participants–

- (a) is deemed to be an authorised borrower and/or authorised lender for the purposes of the abovementioned income tax exemption order only if the person has entered into an SBL agreement with an eligible participant the terms of which are fully in compliance with the rules and directives of the stock exchange and the approved clearing house; and
- (b) the agreement referred to in paragraph 4.03(a) is deemed to be the approved SBL agreement for the purposes of the abovementioned income tax exemption orders.

SBL- NT model

4.04 For the purposes of the *Income Tax (Exemption) (No. 30) Order 1995*:

- (a) Eligible participants are deemed to be authorised lenders and/or authorised borrowers; and
- (b) Agreements between the eligible participants are deemed to be approved SBL agreement if they contain all the matters set out in the rules of the approved clearing house in respect of an agreement for SBL-NT.

4.05 Any person other than an eligible participant–

- (a) is deemed to be an authorised borrower and/or lender for the purposes of the abovementioned income tax exemption order only if the person has entered into an agreement with an eligible participant and that agreement contains all the matters set out in the rules of the approved clearing house in respect of an agreement for SBL-NT; and
- (b) the agreement referred to in paragraph 4.05(a) is deemed to be the approved SBL agreement for the purposes of the abovementioned income tax exemption orders.

4.06 All enquiries regarding these guidelines may be addressed to:

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