

MAY 2023



عيسى السليطي للمحاماة  
ESSA AL SULAITI LAW FIRM

# MODERN LAW

## SECURITIES LENDING & BORROWING (SLB)

[WWW.ESLAA.COM](http://WWW.ESLAA.COM)





## TABLE OF CONTENT

SUBJECT	PAGE NUMBER
Introduction: Definition of Selling Borrowed Securities - Example - Importance of the mechanism of securities Borrowing	01
Legal Framework	03
Purposes of Lending and Borrowing	05
Engagement in SLB Activity	05
SLB Agent License Requirements	06
SLB Agent Obligations	06
Securities that may not be lent	07
What is permitted in any SLB transaction?	08
Requirements for Collaterals	08
Authority's Power to Amend	09
Who can engage in SLB transactions?	09
Required Details	10
SLB Agreements	10
Depository	11
Authority's Powers in SLB Transactions	11
Conclusion	12





# SECURITIES LENDING & BORROWING (SLB)

## INTRODUCTION

### Definition of Selling Borrowed Securities (Covered Short Selling CSS)

**Selling Borrowed Securities are one of the methods used by investors in the securities markets to make profits in events where the prices of securities trend downwards in the market, with the aim of realizing capital gains from the downward movement in securities prices.**

These operations are carried out on one of the securities allowed for lending and borrowing transactions for the purpose of sale, which is borrowed from its owner (the lending client). These securities are borrowed from their owner (the lending client), and the borrowing client sells them in the market and then buys them back later to return them to the owner. This mechanism is based on the idea of anticipating a

decline in the price of the security in the market, and then repurchasing it at a price lower than the price at which the borrowing client sold it on the borrowing date. Consequently, a profit margin is achieved, which is the difference between the two prices: the higher sale price on the borrowing date and the lower repurchase price on the return date (taking into account the borrowing client's obligation to return all financial rights of the borrowed securities, if any, using the cash collateral provided by him, which reduces the profit margin achieved).

### Example:

For example, Investor (A) anticipates a decline in the price of security (X) in the market and therefore borrows 100 shares of stock (X) from Investor (B), who wishes to lend part of his securities. Assuming that the price of the security

(X) in the market is 100 riyals, Investor (A) sells them in the market for a total sale amount of 100,000 riyals, while depositing a cash collateral of 50,000 riyals. Therefore, if Investor (A)'s expectation is realized and the price of the share (X) drops to 95 riyals, a 5% decrease in the share price, and Investor (A) decides to close his investment position, he repurchases those shares (X) in the amount of 100 shares at a cost of 95,000 riyals. Investor (A) then returns the purchased shares to Investor (B) while realizing a profit of 10%, or 5,000 riyals, plus the return of the cash collateral.

## Importance of the mechanism of securities Borrowing

### Balancing Mechanism

Securities Borrowing helps to balance the supply and demand in the market. The margin buying system enhances the demand side, while the borrowing system strengthens the supply side of the market. Therefore, balance is achieved. For example, in cases where stock prices decline, there will be investors who want to sell the borrowed stocks in order to buy them back later at lower prices, to make profits.

### Lenders:

Borrowing securities offers several benefits to lenders. Investors who hold a certain company's stocks can invest them without the risk of direct trading in the market. They can also move their untraded balance in a safe way to ensure a guaranteed return. Additionally, securities borrowing provides extra assurance through collaterals, whether financial or through other securities. Securities borrowing also assists in hedging operations, balancing price differences, and evading against price fallout. In this case, the investor borrows these stocks and sells them in the market in a way that allows them to balance the buying and selling prices and take advantage of price differences to make profits.





## LEGAL FRAMEWORK

The Qatar Financial Markets Authority (QFMA) issued its Decision No. (04) of 2022 concerning the Issuance of Securities Lending and Borrowing Rules, consisting of 16 articles that govern and regulate the lending and borrowing of securities. These rules are addressed below.

### Article (1): Definitions

The first article of the rules governing the lending and borrowing of securities is as follows:

	Term	Definition
1	UAE	State of Qatar
2	Law	Qatar Law No. 2012 / 8 and its amendments.
3	Authority	Qatar Financial Markets Authority.
4	Market	Financial market that is licensed by the Authority to deal in Securities.
5	Depository	Company licensed by the Authority to carry out the tasks of a Depository.
6	Company	Financial services company that is licensed or registered with the Authority to practice any of the activities stipulated in Article (4) of the Financial Services Regulation issued by the Authority.
7	Securities Lending and Borrowing	When the Lender temporarily transfers the ownership of Securities or sells them to the Borrower outside the Market at a deferred payment price with the obligation or promise of the Borrower to return them or resell them to the Lender at his request at any time during the agreed period or at the end thereof, unless an agreement is reached otherwise.
8	Securities Lending and Borrowing Agent	The Company or the custodian that is licensed by the Authority or registered with it to carry out the activity of Securities Lending and Borrowing.
9	Agency Agreement	Agreement concluded between the investor and the Lending and Borrowing Agent to represent him in a Securities Lending and Borrowing Agreement.

10	Collateral	Cash value or Securities deposited by the Borrower with the Lender to ensure the fulfilment of his obligations to return the borrowed Securities to the lender in accordance with the terms agreed upon in the Lending and Borrowing Agreement.
11	Market Maker	Market member company that is licensed by the Authority to practice market-making activity.
12	Liquidity Provider	Market member company that is licensed by the Authority to practice liquidity provision activity.
13	Qualified Investor	<p>Investor who has sufficient experience to invest in Securities by himself and fulfils the following conditions:</p> <ol style="list-style-type: none"> <li>1. Financial services company.</li> <li>2. Banks, insurance and reinsurance companies, investment and financing companies, and investment funds licensed by the State.</li> <li>3. State institutions, companies owned by it, Qatar Investment Authority and its subsidiaries.</li> <li>4. Investor who is represented by an investment manager that is licensed by the Authority.</li> <li>5. A natural person, provided that he achieves one or more of the following: <ol style="list-style-type: none"> <li>a) He shall have worked in one of the entities that are subject to the supervision of the Authority or the entities that are subject to the supervision of other regulatory authorities in the financial sector in a professional job accepted by the Authority for a period of no less than (3) years.</li> <li>b) He shall have carried out trading transactions in the market, the total value of which is no less than QAR fifty million during the past twelve months.</li> <li>c) He shall have obtained specialised and accredited international or local certificates in the field of investing in financial markets.</li> </ol> </li> </ol>
14	Custodian	Company that is a member of the Depository and licensed by the Authority.



## PURPOSES OF LENDING AND BORROWING

### Article (2):

Article (2) explains the purposes of lending and borrowing securities and enumerated these purposes as follows: "Securities Lending and Borrowing shall be done for the purposes of stock settlement in transactions in which the sold shares are not available at the time of settlement of the deal, or for the purpose of executing short selling deals or for the purpose of returning borrowed Securities, or for the purpose of issuing units of exchange-traded funds, or any other purposes approved by the Authority.

The Lending and Borrowing Agent may lend the Securities he borrows for his own account to any of his clients."

From the above, it is clear that the article limited the cases in which securities may be lent and borrowed to four basic cases whilst providing the Authority the power to approve other purposes, provided that they are accepted.

## ENGAGEMENT IN SLB ACTIVITY

### Article (3):

This article determines who may engage in SLB activity. It states:

"The activity of Securities Lending and Borrowing may not be practiced as one of the financial services activities subject to the supervision of the Authority mentioned in Article No. (4) of the Financial Services Regulation issued by the Authority except through a Lending or Borrowing Agent.

Depending on the context, any of the following tasks related to the Securities Lending and Borrowing transaction can be, but not limited to, Securities Lending and Borrowing activities:

1. Providing advice to the Lender or Borrower regarding the transaction.
2. Selecting and negotiating with a counterpart in the transaction and executing the loan or directing the execution with the counterpart.
3. Receiving, delivering, or directing the receipt of loaned Securities.



4. Receiving, delivering, or directing the receipt of Collaterals.
5. Providing market pricing, corporate procedure, record keeping or other services to manage the transaction.
6. Making and executing coverage requests.
7. Investing or directing investment in cash collaterals.
8. Compensating the Lender or Borrower of Securities in respect of various matters.
9. Any other works specified by the Authority.

The Lending and Borrowing Agent may carry out some of the tasks specified in this article through the parent company or through any company in the same group after the approval of the Authority."

## SLB AGENT LICENSE REQUIREMENTS

### Article (4):

"The Securities Lending and Borrowing Agent shall apply to the Authority to obtain a license to conduct Securities Lending and Borrowing activities, upon fulfilling the following conditions:

1. A financial services company or Custodian holding a license from the Authority, or a license recognised by the Authority.
2. To have the necessary human resources.
3. To have the information systems related to the Lending and Borrowing Activity, and evidence of electronic linkage with both the Depository and the Market.
4. To have records that include the names of customers, the transactions that take place, the contracts that are signed, the commissions and fees that are charged, and the systems for keeping them.

5. Systems of internal control and financial audit.
6. Risk management procedures related to its activity.
7. He shall not have committed material violations of the financial solvency standards during the year preceding the date of submitting the application."

## SLB AGENT OBLIGATIONS

### Article (5):

Article (5) notes ten conditions explaining the obligations of the agent, which are as follows:

1. Concluding an agency agreement with the customer that includes the terms and conditions under which Lending and Borrowing services are provided. The Authority shall be notified with a copy of this Agreement.
2. Informing his client of the risks of Securities Lending and Borrowing and obtaining the client's signature to that effect.
3. Ensuring that the standards set by the Market are met by the Securities subject to the Lending and Borrowing transaction and approved by the Authority, and that there is no restriction on trading them, and that there is sufficient balance of them with him or the Lender.
4. Ensuring that the Borrower has the necessary Collateral to fulfil his obligation to return or sell the Borrowed Securities to the Lender.
5. Notifying the Depository with a copy of the Lending and Borrowing Agreement, to carry out the transfer of ownership resulting from this agreement according to the mechanism and procedures established by the Depository and approved by the Authority.



6. Recording the Lending and Borrowing transactions of the Agent's clients and the instructions received from them, the volume of transactions that took place, the Collaterals provided, and all commissions and fees.
7. Sending regular reports to his Clients - and whenever the Client so requests - to clarify the Lending and Borrowing transactions that have actually been implemented, and what is related to following up on the value of the Collateral.
8. Maintaining the records related to Lending and Borrowing transactions for a period of no less than 10 years.
9. Providing the Authority, the Market, and the Depository with weekly reports on the volume of the Lending and Borrowing Activity, the number, value, and type of Securities involved, or any other reports it requests.
10. Complying with the Authority's legislation and rules of dealing in both the Market and the Depository.

## SECURITIES THAT MAY NOT BE LENT

### Article (6):

Article (6) specifies the securities that may not be lent, as well as the transactions that the borrower may not carry out, namely:

"It shall not be permissible to lend the Securities on which the pledge is placed in accordance with the Market procedures or seize them in accordance with the laws, regulations and legal systems in force in the State or the Securities purchased according to the margin trading system and any other cases determined by the Market.

Likewise, the Borrower may not transfer the ownership of the Borrowed Securities to another party - except for the Lending and Borrowing Agent - or establish any right over them such as mortgage or attachment, or carry out any disposal thereof except for the purposes permitted in accordance with these Rules."



## WHAT IS PERMITTED IN ANY SLB TRANSACTION?

### Article (7):

"Subject to the provisions of the Securities Borrowing and Lending Agreement, the following shall be permitted in any Securities Lending and Borrowing transaction conducted in accordance with these Rules:

1. The Securities Lender shall receive the fee from the Borrower, as well as any Collaterals provided by the Borrower to secure his obligations.
2. In the event that the Borrower fails to pay the fees, or to return the Borrowed Securities, the Lender shall have the right to sell or dispose of the Collaterals and balance their proceeds against the price of buying back the Securities.
3. The Lender shall own all the full ownership rights of the Borrowed Securities, except for the right to sell or transfer the Securities, unless otherwise agreed upon in the Agreement."

## REQUIREMENTS FOR COLLATERALS

### Article (8):

Article (8) specified the requirements for collaterals provided by the Borrower to the Lender as follows:

"Subject to the terms and conditions of the Securities Borrowing and Lending Agreement, the following requirements for the Collaterals to be paid by the Borrower to the Lender shall be fulfilled:

1. Determining the type and value of the Collateral provided by the Borrower to the Lender to secure his performance of his obligation to return the Borrowed Securities, provided that the amount of the Collateral is no less than 100% of the Market value of the Borrowed Securities on the date of borrowing, or any greater amount determined by the Authority or the Market.
2. The Borrower shall agree to return the equivalent of the Securities to the Lender at the specified time, and the Lender shall agree to return the Security in exchange to





the Lender.

3. The Lending and Borrowing Agent, in his capacity as an agent for the Lender, shall carry out the market pricing at the end of the daily trading session for all the Borrowed Securities, and he shall take into account maintaining the level of Collaterals mentioned in Clause (1) above, taking into account the changes in both the price of the Borrowed Securities and the value of any Collateral other than cash denominated in QAR (or any other currency in which the Borrowed Securities are traded).
4. In the event that the value of the Collateral becomes, at any time, less than the level mentioned in Clause (1) above, the Lending and Borrowing Agent, in its capacity as an agent on behalf of the Lender, shall request the Borrower to increase the amount of the Collateral to the required level by offering additional Collaterals.
5. The Lender may invest the Collaterals provided by the Borrower in accordance with the Agreement, and in the event that the Borrower fails to return the Borrowed Securities or sell them to the Lender, the Lender may dispose of the collateral assets to purchase Securities to cover the loan in the following two cases:
  - a) If the Borrower is unable to provide additional Collateral by the end of the second business day after notification.
  - b) If the value of the Collateral is less than 100% of the Market value of the loaned Securities for one day after notification.
6. The Lending and Borrowing Agent may appoint another party to manage the Collateral subject to the Lending and Borrowing Agreement between the Lender and the Borrower, upon the approval of the Authority."

## AUTHORITY'S POWER TO AMEND

### Article (9):

Article (9) stipulates the Authority's power to amend the provisions or agreements of SLB Rules, as follows:

"The Authority may, from time to time, amend, cancel or supplement the provisions of the Securities Lending and Borrowing Rules or all applicable Securities Lending and Borrowing Agreements."

## WHO CAN ENGAGE IN SLB TRANSACTIONS?

### Article (10):

Article (10) regulates who has the right to engage in SLB transactions, as follows:

"It shall not be permissible to engage in the Securities Lending and Borrowing transaction except for qualified investors, provided that a Lending and Borrowing agent is notified of the details of the transaction and a copy of the Lending and Borrowing Agreement, in order to carry out the procedures for registering and executing that transaction with the Depository.

The unqualified investor may request the Lending and Borrowing Agent to represent him in his capacity as a Lender or Borrower to enter into a Securities Lending and Borrowing transaction, after signing an Agency Agreement concluded between them, and authorising the Lending and Borrowing Agent to represent the investor in the Lending and Borrowing Agreement."

## REQUIRED DETAILS

### Article (11):

Article (11) defines the required details to be completed for both parties in SLB agreements, which are as follows:

"The Lender and the Borrower who enter into Securities Lending and Borrowing Agreements shall complete the following data:

Name of the beneficiary Lender and his Agent, if any / Name of the Borrower and his Agent, if any / Name and Code of the Security(ies) being loaned / Number of loaned Security(ies) / Date on which the Securities will be returned / Type and amount of the Collateral, provided that its value is not less than the Market Value of the Borrowed Securities / Clarification of the rights of the parties regarding the replacement of the Collateral / Clarification of the method of distribution of dividends and other rights related to Securities and Collaterals / Securities

recovery procedures and related arrangements in the event that delivery of the required Securities is not possible / Clarification of cases of non-fulfilment of obligations, rights and corresponding obligations owed by the other party / The necessary procedures for the periodic evaluation of the Collateral, and cases of replacing, increasing, liquidating or returning it to the Borrower, and clarification of the resulting rights of the parties / The law by which the Agreement is governed."

## SLB AGREEMENTS

### Article (12):

Article (12) It clarifies the agreements that may be used, as follows: "Internationally recognised Securities Lending and Borrowing Agreements such as Overseas SLB Agreements or the Master SLB Agreement may be used as a basic template for drafting such contracts."





## DEPOSITORY

### Article (13):

Article (13) states that the Depository shall:

1. Provide the electronic systems and systems for linking with Lending and Borrowing Agents to ensure the implementation and registration of Securities Lending and Borrowing transactions, which are carried out in accordance with these Rules.
2. Supervise the activities of the Lending and Borrowing Agents in order to ensure that this activity is carried out in accordance with these Rules.
3. Submit reports to the Authority at the request of the Authority.
4. Inform the Authority when the Lending and Borrowing Agent violates the Rules governing Securities Lending and Borrowing.

Article (14) also clarifies that the authority of the depository shall not to execute any SLB transaction, as it stipulates:

"The Depository may not carry out any Securities Lending or Borrowing transaction in cases specified and approved by the Authority, provided that it notifies both the Authority and the parties to the Lending and Borrowing transaction."

## AUTHORITIES POWERS IN SLB TRANSACTIONS

### Article (15):

Article (15) states that: "The Authority may suspend or cancel the Lending and Borrowing of Securities for a specific Security for a specified or unspecified period in order to maintain confidence in the system of dealing in Securities. It may also take any other measures

it deems necessary to carry out the Securities Lending and Borrowing activity."

Article (16) states that: "In the event of a violation of the provisions of these Rules, the Authority may impose the penalties prescribed against the violator, according to the provisions of the Authority's law, regulations, systems, and decisions issued for its implementation, according to the procedures established by the Authority in this regard."



## CONCLUSION

The State of Qatar, represented by the Qatar Financial Markets Authority (QFMA), is continuously working towards the development and modernization of capital market regulations in line with global developments in financial markets. This is achieved through the introduction of new financial activities and mechanisms that aim to increase investment volumes in the financial markets sector and promote the business of financial service companies by providing alternative investment

options. This is in line with the search for alternative investment vehicles that contribute to increasing trading volumes on the Qatar Stock Exchange, thereby enhancing market efficiency, liquidity, and reducing market volatility. Furthermore, it promotes the development of capital markets through various investment strategies, ultimately increasing investment volumes in the Qatari economy as a whole.





## PREPARED BY



MR. SAFWAT EBRAHIM MOHAMED  
LEGAL COUNSEL

## CONNECT WITH US



عيسى السليطي للمحاماة  
ESSA AL SULAITI LAW FIRM

TEL : +974 4447 1555  
+974 4466 4606  
EMAIL : INFO@ESLAA.COM

BLDG 8, AL MANSOUR ST NO. 980, ZONE 45  
P.O BOX : 4912. DOHA, QATAR

 /eslawfirm

